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A legal study
relating to coal
development

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A LEGAL STUDY RELATING TO COAL DEVELOPMENT-- POPULATION ISSUES

VOLUME FOUR

MONTANA STATUTES RELATING TO RAPID POPULATION GROWTH

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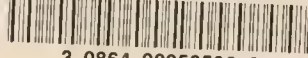
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OLD WEST REGIONAL COMMISSION

A Legal Study
Relating to
Coal Development --
Population Issues

Volume Four

Montana Statutes
Relating to
Rapid Population Growth

Prepared By
Kutak Rock Cohen Campbell
Garfinkle & Woodward
Omaha, Nebraska



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OVERVIEW OF VOLUME FOUR

Volume four is a selective collection of Montana statutes arranged in accordance with a specially devised subject matter outline entitled the Common Index and incorporating all amendments enacted prior to September 3, 1974. Statutes creating various methods of financing capital construction by both public and private entities are obviously relevant to this Study. While summaries of such statutes are included in volume three, the statutes themselves have purposely been excluded from volume four. One reason for this exclusion is that such statutes are easily located through more traditional index references to the particular type of facility to be constructed. In addition, statutes relating to financing methods are customarily applicable only to particular entities or particular types of facilities rather than being of general or state-wide interest.

Preparation of this volume began with formation of the Common Index. This Common Index is a comprehensive summary of topics which must be addressed in order to effectively respond to rapid population influx. The

same Common Index has been utilized in selecting and arranging statutes from each of the three states which are the focus of this Study. The Index is comprised of five major topics with each representing a general category of anticipated problems. Subdivisions have been prepared within each major topic based upon either topical or state-county-city distinctions. Thus, as completed for each state, the Common Index may accurately be described as an abbreviated catalog of the legal and regulatory issues relevant to the problems of rapid population influx and a summary of that state's statutory response or lack thereof, to those issues.

Following completion of the Common Index, the ninety-five separate Titles which comprise the Montana statutes were briefly examined and eight of those Titles were designated for more thorough analysis. A complete list of the statutory Titles may be found on the page entitled Montana Statutes; those Titles which were thoroughly analyzed are indicated by an asterisk.

The complete index of each of the eight Titles selected for thorough analysis, in the numerical sequence of the Titles themselves, follows the Montana Statutes

listing. Those individual chapters which were selected for reproduction in volume four are indicated by a reference to the applicable subsection of the Common Index in the left margin of the Title index. If no citation to the Common Index appears in the left margin, the adjacent chapter or article was determined to be immaterial to the issues identified by the Common Index.

Revisions of the Title indices appearing in supplements to the statutes have been reproduced immediately following the complete Title index found in the most recent edition of the Montana statutes. However, in the body of volume four, amendments to all included statutes have been incorporated at their appropriate location within the statutory scheme and are identified only by marginal references to the statutory supplement in which they appear.

As is more fully explained in the section concerning use of this Study, the most rapid method of locating a statute when its full citation is known is to examine the index to the Title in which that statute appears and, from the adjacent notation in the left margin, determine the

Common Index subheading which encompasses that statute. The particular statute will be located immediately following the blue divider page whose tab corresponds to the appropriate Common Index subheading. In the section following each divider page, all statutes are arranged in their normal numerical sequence.

Location of statutes germane to a particular subject when the citation to those statutes is unknown can be accomplished in either of two ways. First, reference to the Common Index will identify subheadings of this volume which deal with particular subjects. If no citation appears beneath the subheading for the topic sought, no substantive state statute addressed to that topic is currently in force. (Individual cities and counties may, however, have enacted local requirements with respect to these subjects.) In the alternative, an examination of the list of Titles of the Montana statutes, followed by a review of the appropriate Title index will also establish which subheading contains the material sought.

The reader is cautioned that material contained in this volume was current as of September 3, 1974. Under no

circumstances may volume four be relied upon to disclose any statutory alterations which occurred subsequent to that date. The Old West Regional Commission gratefully acknowledges the permission of the Allen Smith Company to include certain copyrighted materials herein.

September 3, 1974

MONTANA

COMMON INDEX

IA. ESTABLISHING NEW COUNTIES, TOWNS, CITIES

1. Counties

- 16-5 Creation of new counties by petition and election
- 16-6 Transfer of records and actions on creation of new counties - jury lists
- 16-7 Change of name of counties (index only)

2. Towns

- 11-2 Organization of cities and towns - petition and census
- 11-30 Entry townsites on public domain for unincorporated cities and towns

3. Cities

- 11-2 Organization of cities and towns - petition and census
- 11-29 Entry townsites on public domain for incorporated cities and towns

IB. FORMS AND POWERS OF COUNTY AND MUNICIPAL GOVERNMENTS

1. Counties

a. Classes (includes change in classes)

- 1972 Montana Constitution, XI, 1, 2 (located in the 1973 supplement.)
- 11-2 Definitions

b. Alternative Governmental Forms (includes changes in forms)

- 16-50 Alternative forms of county government

IB-1. Counties (Continued)

c. Powers

- 16-8 General powers and limitations upon counties (index only)
- 16-9 County commissioners - organization meetings - compensation (index only)
- 16-10 General powers and duties of county commissioners (index only)
- 16-11 Special powers and duties of county commissioners (index only)
- 16-19 County budget system (index only)

d. Boundary Changes

- 16-5 Creation of new counties by petition election (index only)

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- 11-3 Change in classification of cities and towns

b. Alternative Governmental Forms (see 1B-4b)

c. Powers

- 1972 Montana Constitution, XI, 4, 6, 7
- 11-1 General powers
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- 11-8 Executive powers - mayor - clerk - treasurer - chief of police and attorney (index only)
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- 11-10 Powers of city and town councils (index only)
- 11-14 Budget system for cities and towns (index only)
- 11-16 Judicial powers - police courts (index only)

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11-4 Additions of platted tracts to
cities and towns

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a. Classes

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11-2 Classification and organization of
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b. Alternative Governmental Forms

c. Powers

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(index only)
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(continued) (index only)

IB-4. Cities (Continued)

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- 11-7 Officers and elections (index only)
- 11-8 Executive powers - mayor - clerk - treasurer - chief of police and attorney (index only)
- 11-9 Powers of city and town councils (continued) (index only)
- 11-10 Powers of city and town councils (continued) (index only)
- 11-14 Budget system for cities and towns (index only)

d. Boundary Changes

- 11-5 Alteration of boundaries, exclusion and inclusion of territory (note: only applies to a city population between 20,000 and 35,000.)

5. Joint Exercise of Governmental Powers

- 1972 Montana Constitution, XI, 3, 5, 8
- 11-34 City and county consolidated government (index only)
- 11-44 Inter-local cooperation commission - improvement of essential local government services
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- 16-51 Local government study commissions
- 82-37 Planning and Economic Development Act
- 82A-901 Department of intergovernmental relations (index only)
- 82A-901.1 Department of intergovernmental relations (index only)
- 82-4501 Department of intergovernmental relations - examination duties

IC. TRADITIONAL ZONING AUTHORITY

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a. Counties

- 11-38 City or city-county planning boards
- 16-47 Zoning districts

b. Towns

- 11-27 Building regulations - zoning commission

c. Unincorporated Towns

d. Cities

(see IC-1b)

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- 1-9 Municipal and regional airports (index only)

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- 50-12 Reclamation of mined lands
- 50-15 Open cut mining
- 50-16 Strip Mine Siting Act
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- 69-41 Board and department of health and environmental
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- 69-48 Water pollution
- 70-8 Utility Siting Act

The Titles of the Revised Codes of Montana Are Arranged and Numbered as Follows *

Volume 1

- | Part 1 | Part 2 |
|--|---|
| <p>Constitutions, Documents, and Preliminary Laws</p> <p>Table of Corresponding Code Sections</p> <p>Table of Session Laws</p> | <p>3. Agriculture, Horticulture and Dairying</p> <p>4. Alcoholic Beverages</p> <p>5. Banks and Banking</p> <p>6. Bonds and Undertakings</p> <p>7. Building and Loan Associations</p> <p>8. Carriers and Carriage</p> <p>9. Cemeteries</p> <p>10. Children and Child Welfare</p> <p>* 11. Cities and Towns</p> |
| Part 2 | |
| <p>1. Aeronautics</p> <p>2. Agency</p> | |

Volume 2

- | Part 1 | Part 2 |
|---|--|
| <p>12. Codes and Laws</p> <p>13. Contracts</p> <p>14. Co-operatives</p> <p>15. Corporations</p> <p>* 16. Counties</p> | <p>19. Definitions and General Provisions</p> <p>20. Deposit</p> <p>21. Divorce</p> <p>22. Dower</p> <p>23. Elections</p> <p>24. Electric Lines Construction</p> <p>25. Fees and Salaries</p> <p>26. Fish and Game</p> <p>27. Food and Drugs</p> |
| Part 2 | |
| <p>17. Damages and Relief</p> <p>18. Debtor and Creditor</p> | |

Volume 3

- | Part 1 | Part 2 |
|--|---|
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*NOTE: Montana titles indicated by a * are included in this index.

The Titles of the Revised Codes of Montana Are Arranged and Numbered as Follows

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- | | |
|---|---|
| <p style="text-align: center;">Part 1</p> <p>56. Notaries and Commissioners of Deeds</p> <p>* 57. Nuisances</p> <p>58. Obligations</p> <p>59. Offices and Officers</p> <p>60. Oil and Gas</p> <p>* 61. Parent and Child</p> <p>* 62. Parks and Public Recreation</p> <p>63. Partnership</p> <p>64. Persons and Personal Rights</p> <p>65. Pledges and Trust Receipts</p> <p>66. Professions and Occupations</p> | <p>67. Property</p> <p>68. Public Employees' Retirement Act</p> <p>* 69. Public Health and Safety</p> <p style="text-align: center;">Part 2</p> <p>70. Public Utilities</p> <p>71. Public Welfare and Relief</p> <p>72. Railroads</p> <p>73. Recording Transfers</p> <p>74. Sales and Exchange</p> <p>* 75. Schools</p> |
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| <p style="text-align: center;">Part 1</p> <p>85. Trade-Marks and Trade Practices</p> <p>86. Trusts and Uses</p> <p>87. Unemployment Compensation</p> <p>87A. Uniform Commercial Code</p> <p>88. Warehouses and Storage</p> <p>89. Waters and Irrigation</p> | <p>90. Weights—Measures and Grades—Time—Money</p> <p style="text-align: center;">Part 2</p> <p>91. Wills, Succession, Probate and Guardianship</p> <p>92. Workmen's Compensation Act</p> |
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94. Criminal Code
95. Code of Criminal Procedure

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General Index

Title 11

CITIES AND TOWNS

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<u>Cross-reference</u>	<u>by chapter</u>
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1A-2	2 Classification and organization of cities & towns
IB-2a	3 Changes in classification of cities & towns
IB-2d	4 Additions of platted tracts to cities & towns
IB-4d	5 Alteration of boundaries, exclusion and inclusion of territory
IB-2c	7 Officers and elections
IB-2c	8 Executive powers
IB-2c	9 Powers of city and town councils
IB-2c	10 Powers of city and town councils (con.)
IB-2c	14 Budget system for cities and towns
IB-2c	16 Judicial powers - police courts
IB-3c	20 Fire protection in unincorporated towns
ID-2	22 Special improvement districts
IC-1b	27 Building regulations - zoning commission
IA-3	29 Entry townsites on public domain for incorporated cities and towns
IA-2	30 Entry townsites on public domain for unincorporated cities and towns
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IB-5	34 City and county consolidated government
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IC-1a	38 City or city-county planning boards
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- 11-977. Power of condemnation.
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16-501. (4390) Creation of new counties—debts and assets prorated—minimum area and valuation. New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than twelve million dollars (\$12,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be established which shall reduce the area of any existing county from which territory is taken to form such new county, to less than twelve hundred square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties nor shall any new county be formed which contains an assessed valuation of property less than ten million dollars (\$10,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor shall any new county be formed which contains less than one thousand square miles of surveyed land exclusive of all forest reserve land or Indian reservations, not open for settlement, nor shall any line thereof pass within fifteen miles of the courthouse situate at the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat, and in such cases a petition, signed by at least fifty per centum (50%), of the voters in the proposed new county, shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five (5) disinterested persons, who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at fifteen miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 16-504 of this code.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a prorata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a prorata proportion of the assets of the county or counties from which such territory is taken, to be determined as provided by sections 16-502, 16-503 and 16-511.

History: En. Sec. 1, Ch. 226, L. 1919; 1, Ch. 106, L. 1929; amd. Sec. 6, Ch. 406, re-en. Sec. 4390, R. C. M. 1921; amd. Sec. L. 1973.

16-502. (4391) Basis of taxation upon creation of new county—terms used in law defined. For the purposes of this act the assessed valuation of all property, whether included within the boundaries of a proposed new

county, or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in the state of Montana, to wit: By taking that percentage of the true and full value of all taxable property in any county specified by section 84-302.

Whenever in this act the term "assessed valuation" or "valuation based on the last assessment roll" is used, said terms shall be construed as meaning taxable valuation determined as herein provided, not the full and true valuation of property.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4391, R. C. M. 1921. State ex rel. School District No. 28 v. Urton, 76 M 458, 459, 248 P 369.

References

State ex rel. Missoula County v. Brown, 73 M 371, 373, 236 P 548; State ex rel. Foot v. Burr, 73 M 586, 587, 238 P 585;

Collateral References

Taxation—347.
84 C.J.S. Taxation §§ 410-412.

16-503. (4392) Cities and towns eligible for county seat. No city, town, or village shall become the temporary or permanent county seat of any county organization under the provisions of sections 16-501 to 16-520 of this code, or created by an act of the legislative assembly, unless such city or town shall have been incorporated in the manner provided by law, or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder, and there be fifty qualified electors residing within the boundaries of such platted village, and the temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R. C. M. 1921. State ex rel. School District No. 28 v. Urton, 76 M 458, 459, 248 P 369.

References

State ex rel. Missoula County v. Brown, 73 M 371, 373, 236 P 548; State ex rel. Foot v. Burr, 73 M 586, 587, 238 P 585;

Collateral References

Counties—28.
20 C.J.S. Counties § 55.

16-504. (4393) Petition for creation of new county—attached affidavits—notice and hearing. (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such board of county commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such board of county commissioners shall be certified by the county clerk to the board of county commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county shall comply with the orders of the board of county commissioners, in the same manner as if said order had been duly made by the board of county commissioners of each respective county from which territory is proposed to be taken. Such petition shall be signed by at least fifty per cent (50%) of the qualified electors of the proposed new county, whose names appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the board of county commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more counties, separate petition shall be presented from the territory taken from each county; and each of said separate petitions shall be signed by at least fifty per cent (50%) of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper, but may be signed to several petitions which must be similar in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.

(2) Such petition or petitions shall contain:

1. A particular description of the boundaries of the proposed new county.
2. A statement that no line thereof passes within fifteen miles of the courthouse situated at the county seat of any county proposed to be divided, except as hereinafter in this act provided.
3. A statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation.
4. A statement of the surveyed area in square miles which will remain in the county or counties from which territory is taken to form such new county, after such county is formed, and a statement of the surveyed area in square miles which will be in the new county after formed.
5. The name of the proposed new county.
6. A prayer that such proposed new county be organized into a new county under the provisions of this act.

There shall be attached and filed with said petition or petitions an affidavit of five qualified electors residing within each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and they believe that the statements therein are true, and that it is signed by at least fifty per cent (50%) of the qualified electors as herein provided, of the proposed new county, or of the proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so veri-

fed, and the verification thereof, shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavits with the clerk of the said board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be not later than thirty days after the filing of such petition with the clerk of said board. The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the said county clerk shall order and cause to be published, at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of county (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portion of the said county and county (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the said board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting so to be held), and when and where all persons interested may appear and oppose the granting of said petition, and make any objections thereto.

Dated at at Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, file with the said board of county commissioners a bond to be approved by said board, in an amount of five thousand dollars, payable to the county in which said petition is filed, conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than fifty per cent (50%) of the votes cast at said election are "for the new county of (naming the proposed new county)," "No."

(3) At the time so fixed for said hearing, the board of county commissioners shall proceed to hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. No petition or protest or petition for the exclusion of territory shall be considered unless the same is filed at least one day before the time fixed for the hearing, and such petition for the exclusion of territory shall contain the names of not less than fifty per cent of the qualified electors who are resident property taxpayers of any territory to be excluded. All such territory being excluded must be in one block, and contain an area of not less than thirty-six square miles, and be totally within one county, and contiguous thereto, and the board of county commissioners may adjourn such hearing from time to time, but not for more than ten days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in said petition. No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signature from the petition for the exclusion of territory shall be received or con-

sidered which are not filed within five days after the filing of the petition for such exclusion of territory.

(4) The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

1. The boundaries of the proposed new county, and the boundaries so determined by said board of county commissioners shall be the boundaries of such proposed new county, if it be created as herein provided.

2. Whether the said petition contains the genuine signatures of at least fifty per cent (50%) of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least fifty per cent (50%) of the

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3. Whether any line of the proposed new county passes within fifteen miles of the courthouse situate at the county seat of any county proposed to be divided, except as hereinbefore provided.

4. Whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least four million dollars, inclusive of all assessed valuation.

5. Whether the area of any existing county from which territory is taken to form such new county will be reduced to less than twelve hundred square miles of surveyed land, by taking the territory proposed to be taken therefrom to form such new county.

6. Whether the area of the proposed new county will contain at least one thousand square miles of surveyed land to form such new county.

7. The class to which said proposed new county after its creation will belong, and the name of said proposed new county, as stated in such petition.

8. Whether the area embraced within the proposed new county will be reasonably compact.

(5) On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county contiguous to the boundary line of the said proposed new county, and of the old county from which such territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be not included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries. On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors of any territory lying outside said proposed new county, and contiguous to the boundary line of said proposed new county, and of the old county or counties from which such territory is proposed to be included, asking that said territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in such new county, and shall establish and define such boundaries; provided, however, that the segregation of such territory from any old county or counties shall not leave such county or counties with less than twelve million dollars of assessed valuation, based upon the last assessment roll; provided, that no change or changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of ten million dollars, inclusive of all assessed valuation; and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part. Petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the board of county commissioners, and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R. C. M. 1921; amd. Sec. 7, Ch. 406, L. 1973.

Amendments

The 1973 amendment reduced signature requirements for petitions from 55% to 50% in subsections (1), (2) and (4);

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R. C. M. 1921.

NOTE.—Wording of this section changed to conform to amendment of section 16-501 by Sec. 1, Ch. 106, Laws 1929.

Counterpetition for Exclusion

A valid petition describing the territory to be included within the proposed new county was the very foundation of the proceedings for the creation of a new county. While under certain circumstances the board of county commissioners was authorized to exclude territory, there was no authority in the board to incorporate within the boundaries of a proposed new county territory which was not included in the petition praying for its creation, or to exclude territory unless a proper petition for withdrawal thereof was presented. State ex rel. Jacobson v. Board of County Commrs., 47 M 531, 537, 131 P 291.

The decision in this case is rigidly confined to counterpetitions for exclusion, and does not in terms or effect apply to original petitions for the creation of new counties. State ex rel. Wood v. Board of County Commrs., 49 M 165, 167, 140 P 728. See also State ex rel. Padness v. Eio, 53 M 138, 145, 146, 162 P 164.

In enacting this statute, it was competent for the legislature to prescribe the order in which an exclusion petition and an inclusion petition should be considered by the board, but it failed to do so. It did, however, create the board a special tribunal, and clothed it with authority to hear the petitions and determine them, and in the absence of legislative restrictions, this necessarily involved the authority to determine which of the two should be considered first. Apparently the legislature referred this question to the sound discretion of the board, and in the absence of fraud its action thereon

increased from 42% to 50% the vote required to defeat the petition in the last paragraph of subsection (2); and deleted the requirement that petitioners be taxpayers from the first sentence of the paragraph preceding the Notice in subsection (2), and from the second sentence of subsection (5).

is not subject to judicial control by mandamus. State ex rel. Keeford v. Board of County Commrs. of Hill County, 56 M 355, 360, 185 P 147.

Counterpetition for Exclusion—Sufficiency

The board of county commissioners, which is entrusted with the duty of passing upon the sufficiency of the petition required to be filed to effect the elimination of certain territory from a proposed new county, must read it in connection with the original petition for the creation of such county; and if thus, by any fair intendment, a description of the territory sought to be eliminated may be arrived at, it is the duty of the board to give the intention of the petitioners full force and effect. State ex rel. Arthurs v. Board of County Commrs., 44 M 51, 60, 61, 118 P 804.

The fact that a board of county commissioners, in erroneously rejecting a petition seeking the elimination of certain territory from the area of a proposed new county as insufficient, acted in a quasi-judicial capacity is not any defense to the issuance of mandamus. State ex rel. Arthurs v. Board of County Commrs., 44 M 51, 60, 61, 118 P 804.

A board of county commissioners, in passing upon the sufficiency of the petition, is presumed to understand the method pursued by the government in its surveys of public land, and is chargeable with knowledge of the territory included within its own county, as well as its boundaries. State ex rel. Arthurs v. Board of County Commrs., 44 M 51, 60, 61, 118 P 804.

The petition for an elimination of certain territory from the area included within the boundaries of a proposed new county, must contain a description of the territory sought to be eliminated, and a

prayer for the relief demanded. The other facts may be made to appear by evidence upon the hearing, without being specially alleged. *State ex rel. Arthurs v. Board of County Commrs.*, 44 M 51, 60, 61, 118 P 804.

In determining whether a petition for the exclusion of territory from a county proposed to be created was signed by 50 per cent of the qualified electors therein, the board of county commissioners may resort to whatever competent evidence it has at hand, including the great register of voters. *State ex rel. Lang v. Furnish*, 48 M 28, 35, 134 P 297.

A counterpetition for the exclusion of territory from a proposed new county must contain the signatures of at least 50 per cent of the qualified electors resident in the territory sought to be excluded, and the burden is on the counterpetitioners to show that fact on the hearing. *State ex rel. Lang v. Furnish*, 48 M 28, 37, 134 P 297; *State ex rel. Wood v. Board of County Commrs.*, 49 M 165, 170, 140 P 728.

Counterpetition for Exclusion—Verification

A recital in the affidavit verifying a petition for the elimination of certain territory from the area included within the boundaries of a proposed new county, that 50 per cent of the qualified electors of the territory sought to be withdrawn had signed such petition, was sufficient prima facie showing of that fact. *State ex rel. Arthurs v. Board of County Commrs.*, 44 M 51, 68, 118 P 804. But this is not so where the petition is unaccompanied by such affidavit, in which case it may not be taken as prima facie evidence of such facts. *State ex rel. Lang v. Furnish*, 48 M 28, 38, 134 P 297.

Since the statute does not require the verification of counterpetitions, and does not authorize the acceptance of it as probative, the counterpetitions, though verified, cannot be given any evidentiary value. *State ex rel. Wood v. Board of County Commrs.*, 49 M 165, 171, 140 P 728.

A verification to a counterpetition asking for the exclusion of territory sought to be included in a proposed new county, which merely averred that each affiant believed that the counterpetition was signed by at least 50 per cent of the qualified electors of the territory sought to be excluded, was of no probative value as to the facts alleged. *State ex rel. Wood v. Board of County Commrs.*, 49 M 165, 170, 171, 140 P 728.

Notice of Hearing

Publication of notice of hearing on petitions for the creation of a new county required by this act, in certain nowspa-

pers for at least once a week for two weeks next preceding the date fixed for it, is jurisdictional, and failure of publication in one of the papers designated in the week immediately preceding the date of the hearing was fatal to jurisdiction and rendered all subsequent proceedings, including the election, invalid. *State ex rel. Stevens v. McLeish*, 59 M 527, 529, 198 P 357.

Designation by the county clerk of a newspaper by the wrong name, in which to publish notice of the date of hearing of petitions for the creation of a new county, amounted to noncompliance with the statutory direction in that regard. *State ex rel. Stevens v. McLeish*, 59 M 527, 529, 198 P 357.

The requirement of this act that notice of the hearing of new county petitions shall be published "at least once a week for two weeks next preceding the date fixed for such hearing" means two weeks immediately preceding the hearing. *State ex rel. Stevens v. McLeish*, 59 M 527, 529, 198 P 357.

The board of county commissioners is without jurisdiction to proceed with a hearing of a petition for the creation of a new county unless publication of the notice as required by this section has been made; if not so made and the board proceeds with the hearing, its action is void. *Garry v. Martin*, 70 M 587, 591, 227 P 573, distinguished in 83 M 282, 301, 272 P 543.

Under the rule that where a notice is required to be published at least once a week for a period next preceding a certain date, the word "for" means "throughout" or "during the continuance of" the period prescribed, the provision of this section, requiring publication of notice of hearing of a petition for the creation of a new county "at least once a week for two weeks next preceding the date fixed for such hearing" means that two full weeks' notice, fourteen days, shall be given, and that therefore publication made for a shorter period of time is insufficient. *Garry v. Martin*, 70 M 587, 591, 227 P 573, distinguished in 83 M 282, 301, 272 P 543.

One Block

The requirement that territory sought to be excluded from a proposed new county must be in one block—the word "block" implying solidity or compactness—was not met by a petition describing an irregularly shaped tract distributed over fourteen townships, the exterior boundaries of which ran back and forth, in all directions of the compass, alternately including and excluding small tracts, so threaded together as to preserve its continuity, and including those against

the creation of the new county and excluding those favoring it. *State ex rel. Woodward v. Moulton*, 57 M 414, 189 P 59, distinguished in 83 M 540, 553, 273 P 90.

The intent of the legislature in enacting the provision that territory sought to be excluded from a proposed new county must be in one block, held to have been that a block should be mapped out, irrespective of the personnel of those residing within it, the majority of the residents thereof to determine whether, as a whole and not as individuals, they go with the new or remain with the old county. *State ex rel. Woodward v. Moulton*, 57 M 414, 189 P 59, distinguished in 83 M 540, 553, 273 P 90.

Qualified Electors

In computing the number of signatures the petition must bear, the board must take into consideration only those who are qualified electors at the time of the signing of the petition and the number of electors who are shown to have been disqualified must be deducted from the total number residing in the proposed county. *State ex rel. Bogy v. Board of County Commrs.*, 43 M 533, 538, 117 P 1062, explained in 48 M 28, 33, 134 P 297; *State ex rel. Padness v. Eie*, 53 M 138, 145, 162 P 164.

The expression "qualified electors," means persons who possess the necessary constitutional qualifications, and not electors whose names appear on the great register of voters. *State ex rel. Lang v. Furnish*, 48 M 28, 32, 134 P 297.

The burden of establishing the number of qualified electors residing in territory sought to be excluded from a proposed new county is upon the petitioners seeking exclusion, and not upon the proponents of the new county. *State ex rel. Lang v. Furnish*, 48 M 28, 32, 134 P 297.

Taxpayer

A "taxpayer" within the meaning of this section, which requires petitions for the creation of a new county to be verified by five resident taxpayers, is one who owns property within the county and who pays, and is subject to and liable for, a tax. *State ex rel. Woodward v. Moulton*, 57 M 414, 189 P 59.

Where the owner of personalty listed it and paid taxes thereon, failure of the assessor to place his name on the tax roll, or the fact that the property was mistakenly assessed in the name of a newspaper of which he was the owner, did not have the effect of disqualifying him as a "taxpayer." *State ex rel. Woodward v. Moulton*, 57 M 414, 189 P 59.

Verified Petition Prima Facie Evidence

Applying the provisions of subdivision 6 of subsection (2) of this section by analogy to proceedings for the consolidation of school districts, held that a verified petition for such consolidation was prima facie evidence that it contained a majority of the resident freeholders of a district affected at the time it was filed. *Swaim v. Redeen*, 101 M 521, 531, 55 P 2d 1.

When Protest Must Be Filed

Under this section, petitions for the exclusion of territory and protests against the exclusion must, but protests against the creation of a new county need not, be filed at least one day before the date set for hearing to entitle them to consideration by the board of county commissioners, it being sufficient if such latter protests are filed on or before the time fixed for the hearing. *State ex rel. Faragher v. Moulton*, 68 M 219, 221, 224, 216 P 804.

Withdrawal from Petition

In the absence of legislative expression to the contrary, signers of a petition may withdraw their names at any time before final action thereon; and the board of county commissioners was in error in refusing to consider withdrawals from petitions theretofore filed asking the exclusion of certain territory from a proposed new county upon the ground that the withdrawals of signatures, though filed before final action, had not been presented until after the date fixed for the hearing. *State ex rel. Lang v. Furnish*, 48 M 28, 35, 36, 134 P 297, explained in 103 M 99, 113, 61 P 2d 815.

The matter of the creation of a new county must be determined on the case as made upon the date fixed for the hearing, save as it may be affected by subsequent withdrawals before final action taken; therefore, protests against its creation, or petitions for the exclusion of territory from within its proposed boundaries filed after the date fixed for the hearings, may not be entertained by the board of county commissioners. *State ex rel. Lang v. Furnish*, 48 M 28, 35, 36, 134 P 297.

The right of one who had signed a petition for the creation of a new county and then signed a withdrawal of his name therefrom, to thereafter and before the hearing withdraw from the withdrawal is not absolute, and therefore no clear legal duty being imposed upon the board of county commissioners to give effect to the withdrawal from the withdrawal, mandamus does not lie to compel it to do so. *State ex rel. Faragher v. Moulton*, 68 M 219, 221, 224, 216 P 804, explained in 103 M 99, 113, 61 P 2d 815.

References

County of Hill v. County of Liberty, 62 M 15, 16, 203 P 500; State ex rel. Missoula County v. Brown, 73 M 371, 373, 236 P 348; State ex rel. School Dis-

trict No. 28 v. Urton, 76 M 458, 459, 248 P 369.

Collateral References

Counties \S 13.
20 C.J.S. Counties \S 28.

16-505. (4394) Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat. (1) If the said board of county commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than twelve million dollars, inclusive of the assessed valuation, nor the area thereof to less than five hundred square miles of surveyed land, and that the proposed new county contains property of an assessed valuation of at least ten million dollars, inclusive of all assessed valuation, and that the proposed new county has an area of at least one thousand square miles of land, and that no line of said proposed new county passes within fifteen miles of the courthouse situate at the county seat of any county proposed to be divided, except as hereinbefore provided, and that said petition contains the genuine signatures of at least fifty per cent (50%) of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least fifty per cent (50%) of the qualified electors of that portion of the proposed new county from which it is taken, then the said board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts, and define their boundaries and designate the names of such districts.

(2) Said board of county commissioners shall also, if necessary for the purpose of the election hereinafter provided for, change the boundaries of the election precincts in said old county or counties to make the same conform to the boundaries of the proposed new county; provided, that the boundary lines of no such precinct shall extend beyond the boundary lines of the then existing county in which it is located, and from which the territory is proposed to be taken; and said board shall appoint election officers to act at said election and to be paid by said board.

(3) Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who are regis-

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tered under the provisions of the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana.

(4) Such proclamation and notice of election shall be published at least once a week for three weeks before the holding of such election, in some newspaper of general circulation published in the territory which is proposed to be taken for the new county, and a copy thereof shall be mailed immediately by the county clerk of the county in which the petition is filed to the county clerk of each county from which territory is taken for the proposed new county. Such proclamation and notice shall require the voters to cast ballots which shall contain the words, "For the new county of..... (giving the name of the proposed new county)" "Yes," and "For the new county of..... (giving the name of the proposed new county)," "No," and each voter desiring to vote for the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of.....," "Yes," in the manner now required by law in other elections, and each voter desiring to vote against the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of.....," "No," in the manner now required by law in other elections; and shall also contain the names of persons to be voted for to fill the various elective offices designated in said proclamation for counties of the class to which said proposed county will belong, as determined by the board of county commissioners as herein otherwise provided.

(5) There shall also be printed upon said ballot the words, "For the county seat," and the names of all cities or towns which may have filed with the county clerk a petition signed by at least twenty-five qualified electors, nominating any city or town within the proposed new county for the county seat, and the voter shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot. At the special election to be held, as provided in this act, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county, and the majority of all the votes cast therefor shall determine the election thereon. In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat, and in case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter. When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

(6) The proclamation calling the election and the notice thereof provided for in this act shall be made and given exclusively by the board of county commissioners with which is filed the said petition for the formation

and establishment of such new county, and such board shall cause the clerk of said county to furnish to the officers of each precinct in such proposed new county all ballots, poll list, tally lists, registers for voters' signatures, ballot boxes, and other election supplies and equipment necessary to conduct such election, and which are not hereinafter specifically directed to be furnished by the clerk of another county or counties. Such election shall be governed and controlled by the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided. The returns of all elections for the creation of the county, and for officers and for location of the county seat as provided for in this act, shall be made to and canvassed by the board of county commissioners of the county from which the largest area is taken by the proposed county.

(7) The county clerk of each county from which territory is taken for the proposed new county shall, not less than five days before the date of such election, furnish to each board of election within said proposed new county, a copy of the official register for the precincts of such proposed new county as are within their respective counties, and the copies of indexes thereof required by law containing the names of all persons who were qualified electors at the last general election before the date of such election.

All returns of election herein provided for shall be made to the board of county commissioners calling such election.

All nominations of candidates for the office required to be filled at said election shall be made in the manner provided by law for the nomination of candidates by petition.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws relating to primary elections in this state, shall have application to any election provided for in this act.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R. C. M. 1921.

NOTE.—Wording of this section changed to conform to section 16-501.

Division into School Districts

The matter of dividing a new county into school districts being lodged in the discretion of the commissioners of the old county out of which the new one is created, a court cannot, upon finding that the discretion had been erroneously exercised, substitute its discretion and establish the boundaries so as to exclude territory which should not have been included, or hold the order valid as to the portion properly included and invalid as to the other. *State ex rel. School District No. 28 v. Urton*, 76 M 458, 459, 218 P 369.

Where upon the creation of a new county the territory embraced within a school district for many years existed in one of the two old counties out of which the new one was created, was cut in two, causing it to lie partly in the new county

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R. C. M. 1921; amd. Sec. 8, Ch. 406, L. 1973.

Amendments

The 1973 amendment reduced the signature requirement on petitions from 58% to 50% of the qualified electors in sub-

and partly in the old, and the county commissioners charged with the duty of dividing the new county into school districts did not properly perform it but left the boundaries of the district in question as they were before the creation of the new county, and the district ipso facto became a joint one, and refusal of the county treasurer of the old county in which a portion of the district lay to transmit to the treasurer of the new county the funds collected by him as taxes upon the property within that portion for school purposes, was wrongful. *State ex rel. School District No. 28 v. Urton*, 76 M 458, 459, 218 P 369.

Rehearing

After an order calling an election to determine whether a new county should be created had been made and the board of county commissioners clothed with jurisdiction had adjourned sine die, it was without power to grant a rehearing. *State ex rel. Wood v. Board of County Commrs.*, 49 M 165, 172, 116 P 728.

section (1); and deleted "and who have resided within the limits of the proposed county for a period of more than six months next preceding the day of the election" following "territory is taken to form such proposed new county" in the second sentence of subsection (3).

16-506. (4395) Measures to be taken after election—officers—effect of adverse vote. (1) If, upon the canvass of the votes cast at such election, it appears that more than fifty per cent (50%) of the votes cast are "For the new county of", "Yes," the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of county, and that the city or town receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the person receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the secretary of state, and ninety days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the board of county commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board of county commissioners and the county clerk shall immediately, upon receiving their certificates of election, assume the duties of their respective offices.

(2) The board of county commissioners shall have authority to provide a suitable place for the county officers, and to purchase such supplies as may be deemed necessary for the proper conduct of the county government. All other officers take office ninety days after the filing of the resolution herein provided for with the secretary of state. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state, and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears that more than fifty per cent (50%) of the votes cast at said election are "For the new county of", "No," the board of county commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease; and no other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination.

History: En. Sec. 4, Ch. 226, L. 1919;
-en. Sec. 1395, R. C. M. 1921; amd. Sec.
4, Ch. 406, L. 1973.

Amendments

The 1973 amendment reduced the votes necessary to create a county from 58% to a simple majority at the beginning of

1973 SUPPLEMENT

1973 SUPPLEMENT

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R. C. M. 1921.

Term of Office

Though the legislature in the New Counties Act (this section) did not declare that where all the members of the board of county commissioners must be elected at the creation of a new county, none holding over as members of the board of the parent county because of their residence in the proposed new county, they shall be elected for terms of two, four and six years to comport with the intention of the people in amending section 4, article XVI of the constitution, it did declare that they should hold office until the time provided by general

law for the election of such officers, and not until the next general election, and thereby intended that when under the general law a term should not expire with the general election, the commissioner elected should hold over such general election. State ex rel. Foot v. Rogge, 80 M 1, 9, 257 P 1029.

Chapter 106, Laws 1925 (16-508 and 16-509), providing that county commissioners elected at a special election for the creation of new counties shall hold office until the next general election, held, in the nature of an amendment to this section, which not being retroactive, has no effect upon a special election held in 1924. State ex rel. Foot v. Rogge, 80 M 1, 9, 257 P 1029.

16-507. (4396) Officers of new county—judicial district. At the election provided for in section 16-505 of this code, there shall be chosen such county, township, and district officers as are now or may hereafter by general law be provided for in counties of the class to which the said new county is determined to belong, as herein provided; provided, that all duly elected, qualified and acting officers of the county or counties, who may reside within the proposed new county, shall be deemed to be officers of said new county if they file with the board of county commissioners, whose duty it shall be to call the election, within five days after the final hearing and determination of said petition for such proposed new county, their intention to become officers of said proposed new county, and the board of county commissioners issuing the proclamation of any election, as in this act provided, shall omit providing for the election of any such officers as may have filed their declaration as herein provided; and provided, also, that all duly elected, qualified, and acting justices of the peace and constables residing within the proposed new county at the time of the division of such county into townships, as hereinbefore in section 16-505 provided, shall hold office as such justices of the peace or constables in said county for the remainder of the term for which they were elected on qualifying as justices of the peace or constables for the respective townships in which they reside, when said townships are organized as provided in this act; provided, further, that all duly elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as hereinbefore in section 16-505 provided, shall hold office as school trustees in said new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as said districts are organized as provided by this act. Each person elected or appointed to fill an office of such new county under the provisions of this act shall qualify in the manner provided by law for such officers, except as herein otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided, after the receipt of the certificate of his election. Each of such officers may take the oath of office before any officers authorized by the laws of the state of Montana to administer oaths, and the bond of any officer from which a bond is required shall be approved by any judge

of the district court of the district to which such new county is attached for judicial purposes. The officers elected or appointed under the provisions of this act shall each perform the duties and receive the compensation now provided by general law for the office to which he has been appointed or elected in the counties of the class to which such new county shall have been determined to belong, as herein provided under the general classification of counties in this state.

Said new county, when created and organized in pursuance of the provisions of this act, shall be attached to such judicial district as may be designated by the governor of the state of Montana, in a proclamation to be issued by him, designating such new county as attached to the particular judicial district for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R. C. M. 1921.

Proclaiming Election

In view of the provision of this section, that all officers of a county out of which a new county is to be created, residing in the proposed new county shall be deemed officers of the new county if within five days after determination on the petition for the creation of a new one they shall indicate their intention to become officers of the new county, and the board of com-

missioners shall then omit providing for the election of such officers, it would seem that the proclamation for the election of officers of the new county should be made after five days from the determination on the petition. *State ex rel. Foot v. Rogge*, 80 M 1, 6, 257 P 1029.

Collateral References

Counties↪62; Courts↪45.
20 C.J.S. Counties § 101; 21 C.J.S. Courts § 136.

16-508. (4396.1) Repealed—Chapter 194, Laws of 1967.

Repeal

This section (Sec. 1, Ch. 106, L. 1925), relating to the election of a state senator,

was repealed by Sec. 13, Ch. 194, Laws 1967.

16-509. (4396.2) Board of county commissioners to be elected. At the special election held for the purpose of voting on the question of the creation of a new county, a board of county commissioners shall be elected, who shall hold office until the next general election.

History: En. Sec. 2, Ch. 106, L. 1925.

Application of Section

This section, providing that county commissioners elected at a special election for the creation of new counties, shall hold office until the next general election, held, in the nature of an amendment to

section 16-506, which, not being retroactive, has no effect upon a special election held in 1924. *State ex rel. Foot v. Rogge*, 80 M 1, 11, 257 P 1029.

Collateral References

Counties↪41.
20 C.J.S. Counties § 75.

16-510. (4397) Commission appointed by governor to adjust indebtedness of old and new counties. It shall be the duty of the persons elected to or continuing to hold the office of county commissioners of said new county to meet at the county seat thereof within five days after all of them shall have qualified, and upon organization of said board of county commissioners it shall notify the governor of the state of the organization of said county, and thereupon it shall be the duty of the governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county, and no two of whom shall be from any one county; the three persons so appointed shall form and be a board of commissioners. Such commissioners shall, within ten days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their num-

ber a chairman, and also elect a secretary who must not be a member of said commission. Thereafter such commission may meet at such place or places as it may select. A majority of such commissioners shall constitute a quorum for the transaction of business. Said commission shall have power to compel by citation or subpoena, signed by their president and secretary, the attendance of such persons and the production of such books and papers before said commission as may be required in the performance of the duties imposed by this act, except that the official records of any county or counties from which said new county was formed shall in no case be taken away from the county seat of said county. It shall be the duty of the sheriff of any county to execute in his county all lawful orders and citations of the said commission; and for any services so performed the sheriff shall be allowed the same fees as are allowed to him for services in civil actions; and all witnesses attending before said commission shall be entitled to the same compensation and mileage as is allowed to witnesses in courts of record; provided, that no witness shall be excused from attendance at the time and place mentioned in said order or citation by reason of the failure of the officer making such service to tender to such witness his fees and mileage in advance.

History: En. Sec. 6, Ch. 226, L. 1919;
re-en. Sec. 4397, R. C. M. 1921.

References

State ex rel. Furnish v. Mullendore, 53
M 109, 111, 161 P 949.

16-511. (4398) Determination of amount of indebtedness and value of property—taxation. (1) Said board of commissioners shall immediately after its organization ascertain the costs of the election held hereunder, and apportion the same pro rata among each of the counties from which territory was taken to form such new county; shall ascertain the indebtedness of each county from which territory was taken to form the new county, as the same existed at the time when the result of the election was declared by the board of county commissioners, as hereinbefore provided, and also ascertain the total value of all property at the time belonging to each of said counties from which territory was taken and situated within the limits of said old counties, respectively. It shall also ascertain the assessed value of all property in each of the original old counties from which territory was so taken, according to the last completed assessment made for said county, and also the assessed value, under the same assessment, of all property within the territory of the new county which shall have been taken from the old county or counties from which said new county was formed. They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election, as hereinbefore provided, and if such indebtedness exceeds the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof, to be determined as follows:

"As said assessed value of the property in the old county is to the said assessed value of the property in the territory by this act to be incorporated within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county."

(2) Said board of commissioners shall certify forthwith to the board of county commissioners of the new county, and the old counties thereby affected, the amount constituting the due proportion of said excess payable by such new county to each of them; also the value of any property belonging to each old county at the time when said division took effect (as hereinbefore provided), which is situated in the new county. The sum of said ascertained value of said last-mentioned property added to the ascertained proportion of said excess which the new county is to pay the old county, and its proportion of the expense of said election as aforesaid, shall be an indebtedness from the new county to the old county, and the said property situated as aforesaid in the new county shall upon settlement therefor, as provided in this act, become the property of the new county; and the old county shall pay the entire indebtedness against it, and the expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof, as hereinbefore provided. The proceedings in this section required to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county, in the manner and at the ratio in said section provided.

(3) If, upon the settlement between the old and the new county as herein provided for, the new county shall be found to be indebted to the old county, or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county, and said new county shall pay the same; provided, however, that such payment by said new county may be made in not more than three equal annual payments, or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the board of county commissioners of said new county, adopted within one year after the receipt of the statement from the board of commissioners, as aforesaid, of the amount or amounts due from it. If the value of the property belonging to the old county exceeds the indebtedness of the old county, then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the board of commissioners, and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county, when the indebtedness of the old county exceeds the value of the property in the old county. In the determination of the value of county property all buildings and their furniture, real estate, road tools, and machinery, and all steel bridges which may have been constructed and in use for a less period than ten years, shall be taken into consideration by the said commissioners.

Delinquent taxes due to the old county against property situated in the new county shall be transcribed in and collected by the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R. C. M. 1921.

Constitutionality

In proceedings for the organization of a new county, the board of county commissioners is required to act as a quasi-

judicial tribunal, and this constitutes no invasion of the constitutional provisions which lodge the judicial power of the state in its courts. *State ex rel. Arthurs v. Board of County Commrs.*, 41 M 51, 71, 118 P 804; *State ex rel. Jacobson v. Board of County Commrs.*, 47 M 531, 536, 134

P 291; *State ex rel. Lang v. Furnish*, 48 M 28, 33, 134 P 297.

Delinquent Taxes

Under the New Counties Act, providing for the apportionment of property and debts between a new and the old situated in that portion of the parent county or counties incorporated in the new county, taxes which are delinquent upon creation of the new one or were delinquent and remain unpaid for previous years, are collectible by and belong to the new county. (See Opinion on Motion for Rehearing.) *County of Hill v. County of Liberty*, 62 M 15, 16, 203 P 500.

Delinquent taxes paid on property incorporated in a new county, in the interim between the passing of the resolution by the board of commissioners of the parent county and the expiration of the ninety-day period after its filing with the secretary of state, belong to the parent and not to the new county. *County of Hill v. County of Liberty*, 62 M 15, 16, 203 P 500.

Property of the County

"Property of the county" within the meaning of section 3, article XVI, of the constitution, under which, when a new county is created, the net indebtedness of the old county, its ratable proportion of which the new county must pay, is to be determined by deducting from its total indebtedness the value of all property of the old county, means such property as a county holds and can sell. *State ex rel. Judith Basin County v. Poland*, 61 M 600, 203 P 352.

Property of the County—Bridges

Generally speaking, bridges are not such county property as that their value shall enter into consideration in the adjustment of the indebtedness of the old county with the new one. A bridge is to be treated as but a portion of a public highway. *State ex rel. Foster v. Ritch*, 49 M 155, 156, 157, 140 P 731.

A partly finished bridge constructed with funds obtained by a bond issue is not such county property as it may sell, and therefore cannot be taken into consideration as county property in the adjustment of indebtedness between an old and a new county. *State ex rel. Judith Basin County v. Poland*, 61 M 600, 203 P 352.

Since a completed and used bridge belongs to the state and therefore is not "property of the county" within the meaning of section 3, article XVI, of the constitution, prescribing the method by which, in the creation of a new county out of an old one, the proportion of the net indebtedness of the old county charge-

able to the new one shall be ascertained, the legislature was without power to authorize the commissioners appointed to adjust the indebtedness between a new and an old county as it did by the enactment of section 7 of chapter 139 of the Laws of 1915 (since repealed) to take into consideration steel bridges constructed and in use for a period of less than ten years, in determining the value of county property. *State ex rel. Missoula County v. Brown*, 73 M 371, 373, 236 P 548.

When Mandamus Is Proper To Compel Adjustment of Indebtedness

Mandamus is the proper remedy to compel commissioners appointed to adjust county indebtedness between an old and a new county to reassemble and correctly apportion such indebtedness; the fact of their adjournment being immaterial. Such proceedings should be brought in the name of the county, and not by the board of county commissioners in their official capacity. *State ex rel. Furnish v. Mullendore*, 53 M 109, 110, 117, 161 P 949.

Error committed by a board of commissioners appointed to adjust the indebtedness between an old and a newly created county, which is a function judicial in character, in taking bridges into consideration as county property, constitutes error within jurisdiction not correctible by certiorari, even though provision is not made for an appeal or some other mode of review of the board's action. *State ex rel. Furnish v. Mullendore*, 53 M 109, 116, 117, 161 P 949.

Where the board of commissioners of a county a portion of which was thereafter included in a new county, in order to obtain favorable action by the electors of that portion on a proposed issue of road bonds, passed a resolution, amounting to a promise merely, that in the event the bonds were authorized, a certain portion of the receipts would be devoted to road improvement in their district, their breach of trust in thereafter failing to carry out their promise could not be remedied by writ of mandate to compel the board of adjusters of the indebtedness between the old and the new county to charge the old county with the amount the district should have received under the resolution, the New Counties Act (Ch. 226, Laws 1919) (16-501 et seq.) not authorizing the adjusters to take such action. *State ex rel. Judith Basin County v. Poland*, 61 M 600, 203 P 352.

Where two counties, out of which a third was created, made no objection to the report of the commissioners appointed to adjust the indebtedness between the counties, and with knowledge of mand-

mus proceedings instituted by the new county to have the board's findings reviewed, did not intervene though they were represented by their respective county attorneys who took part in the hearing, but waited until final decision in such proceeding and until the new county had incurred expense in the issuance of bonds to pay the indebtedness due the parent counties, and then commenced proceedings to compel the board of adjustment to reassemble and correct its findings, they were guilty of laches warranting dismissal of the proceedings. *State ex rel. Cascade County v. Poland*, 66 M 286, 291, 213 P 800.

The matter of dividing a new county into school districts being lodged in the discretion of the commissioners of the old county out of which the new one is created, a court cannot, upon finding that the discretion had been erroneously exercised, substitute its discretion and establish the boundaries so as to exclude territory which should not have been included, or hold the order valid as to the portion properly included and invalid as to the other. *State ex rel. School District No. 28 v. Urton*, 76 M 458, 459, 248 P 369.

Collateral References

Counties—16 (1), (2).

20 C.J.S. Counties §§ 35, 36.

16-512. (4399) Compensation and expenses of commissioners. Members of the board of commissioners provided for under this act shall receive a compensation of not to exceed eight dollars per day for every day they are actually employed under the provisions of this act, all of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county, and the amounts payable by each county shall be paid by the treasurers of the respective counties, after the same shall have been presented to and allowed by the board of county commissioners, as is provided by law for claims against any county.

History: En. Sec. 8, Ch. 226, L. 1919;
re-en. Sec. 4399, R. C. M. 1921.

16-513. (4400) Assessment and collection of taxes. After the creation of a new county, as herein provided, its officers shall proceed to complete all proceedings necessary for the assessment or collection of the state and county taxes for the then current year, and all acts and steps theretofore taken by the officers of the old county or counties prior to the creation of the new county shall be deemed and taken as having been performed by the officers of the new county for the benefit of the new county; and upon the creation of the new county it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the board of county commissioners of such new counties copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes of property in such new county. Such copies shall be filed with the respective officers of the new county who would have the custody of the same if the proceedings had been originally had in the new county, and such certified copies shall be taken and deemed as originals and original proceedings in the new county, and all proceedings therein recited shall be taken and deemed as original proceedings in the new county, and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county; and the officials of the new county are hereby authorized and directed to proceed thenceforth with the assessment and col-

lection of said taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

History: En. Sec. 9, Ch. 226, L. 1919;
re-en. Sec. 4400, R. C. M. 1921.

Collateral References

Taxation 297.

84 C.J.S. Taxation § 352.

16-514. (4401) School and road funds. The county superintendent of schools of the old county, or each of the old counties, respectively, shall furnish the county superintendent of schools of the new county with a certification of the ANB in the different school districts in the territory set apart to form the new county, and shall certify to the board of county commissioners the amount due; and said board shall order a warrant drawn on the treasurer of the new county for all the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county from his county; and the county treasurer shall certify to the county commissioners the amount due in the different road funds, and the county commissioners shall order a warrant drawn on the treasurer of their county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county from their county, which said amounts shall be properly credited in both counties. And whenever, in the formation of a new county, a road or school district has been divided, the board of county commissioners shall, by resolution, direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: En. Sec. 10, Ch. 226, L. 1919;
re-en. Sec. 4401, R. C. M. 1921; amd. Sec.
1, Ch. 137, L. 1973.

Collateral References

Highways 99½; Schools and School
Districts 19 (1).

40 C.J.S. Highways § 176; 78 C.J.S.
Schools and School Districts § 21.

The 1973 amendment substituted "a certification of the ANB in the different school districts" for "a certified copy of the last school census of the different school districts" in the early part of the section.

16-515. (4402) Records and books—furnishing and transcribing. The board of county commissioners of any new county formed as aforesaid must provide suitable books, and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property, or the title thereof, situated in the new county, and said records, when so transcribed and certified, as herein provided, shall have the same force and effect as such original records; the said county commissioners shall have full power and authority to contract for transcribing of records as now provided by law; provided, that all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration, which may affect or relate to property or persons situate within the new county, shall be by the county clerk of the old county delivered to the county clerk of the new county, and be preserved by said county clerk of the new county as permanent files of such new county; and provided, further, that the files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon, or any other actions affecting

real estate lying wholly in the new county shall be, by the clerk of the district court of the old county, delivered to the clerk of the district court of the new county to be kept and preserved by him as permanent files of such new county, to the end that only the minutes and other entries in books kept by the clerk of the district court need be transcribed.

History: En. Sec. 11, Ch. 226, L. 1919;
re-en. Sec. 4402, R. C. M. 1921; amd. Sec.
1, Ch. 75, L. 1925.

16-516. (4403) Transfer of pending actions in district court. All actions pending in the district court of the old county or counties for the recovery of the possession of quieting title to, or the enforcement of liens upon, or any other actions affecting real estate lying wholly in the new county shall forthwith upon the delivery of the files in said action to the clerk of the district court of the new county, as provided in section 16-515, be transferred to the district court in which the new county may be attached for judicial purposes, and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county.

History: En. Sec. 12, Ch. 226, L. 1919;
re-en. Sec. 4403, R. C. M. 1921; amd. Sec.
2, Ch. 75, L. 1925.

Collateral References
Courts \hookrightarrow 485.
21 C.J.S. Courts § 502.

16-517. (4404) Publication by posting of notice. Whenever in this act publication of any notice is provided for, and no newspaper of general circulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notices in at least ten public places in such territories for the same length of time said notice was required to be published.

History: En. Sec. 13, Ch. 226, L. 1919;
re-en. Sec. 4404, R. C. M. 1921.

Collateral References
Notice \hookrightarrow 11.
66 C.J.S. Notice § 13.

16-518. (4405) Repealed—Chapter 194, Laws of 1967.

Repeal
This section (Sec. 14, Ch. 226, L. 1919),
relating to representation in the legisla-
ture, was repealed by Sec. 13, Ch. 194,
Laws 1967.

16-519. (4406) Misdemeanor and malfeasance in office. Any member of the board of county commissioners, or any other officer who unlawfully and knowingly violates any of the provisions of this act, or fails or refuses to perform any duty imposed upon him hereunder, shall be guilty of a misdemeanor and of malfeasance in office, and shall be deprived of his office by a decree of a court of competent jurisdiction, after trial and conviction.

History: En. Sec. 15, Ch. 226, L. 1919;
re-en. Sec. 4406, R. C. M. 1921.

Collateral References
Counties \hookrightarrow 45, 67.
20 C.J.S. Counties §§ 78, 108.

16-520. (4407) Repealing and saving clause. All acts and parts of acts in conflict herewith are hereby repealed, with the exception: This act shall not apply in any cases whereby the election has been held under the act passed by the fifteenth legislative session for the creation of counties

and a majority vote has been cast in favor thereof, but the provisions of this act shall be deemed in full force and effect so far as they may affect any proposed new county now in process of creation, unless said new county can comply with the requirements of this act; and it is hereby made the duty of the board of county commissioners which may have ordered any election in pursuance of existing laws to immediately make an order annulling and setting aside all further proceedings in relation to such proposed new county, including an order to nullify and set aside any election order theretofore made; provided, if any order is made nullifying and setting aside any election as provided in this section, any bond which may have been given in pursuance with the provisions of law relating to the costs of election for the creation of any proposed new county shall be deemed void, and no liability shall be incurred thereunder.

History: En. Sec. 16, Ch. 226, L. 1919;
re-en. Sec. 4407, R. C. M. 1921.

Collateral References
Counties—2.
20 C.J.S. Counties § 11.

CHAPTER 6

TRANSFER OF RECORDS AND ACTIONS ON CREATION OF NEW COUNTIES—JURY LISTS

- Section 16-601. New counties entitled to records.
16-602. County commissioners to have records transcribed.
16-603. Commissioners' power to contract.
16-604. Payment for transcribing.
16-605. Certificate of transcript.
16-606. Transcribed records to be filed.
16-607. Effect of transcribed records.
16-608. New counties—transfer of action affecting real estate.
16-609. New counties—jurisdiction of court.
16-610. New counties—fees of clerk.
16-611. Transcript of records when territory detached from one municipality and added to another.
16-612. Apportionment of indebtedness and credits where territory is detached and annexed.
16-613. Collection of taxes in territory taken from one municipality and added to another.
16-614. Transfer of records on creation of new county.
16-615. Preparation of list of delinquent taxes not heretofore transcribed on creation of new county.
16-616. Notice to persons currently assessed.
16-617. Redemption when by payment of original tax only.
16-618. Duty of county treasurer of such new county.
16-619. Transcription of records, how made.
16-620. Old county to clear tax liens—certification.
16-621. County treasurer and other taxing officials relieved from certain liability.
16-622. Jury list for current year in new counties.
16-623. Duty of clerk of court in the old county to certify jury list to clerk of new county.
16-624. Time within which jury list to be made and certified by clerks of old county.
16-625. Removal of names from jury box of old county.
16-626. Duty of clerk of court in new county regarding jury lists.

16-601. (4408) New counties entitled to records. Any county or counties of the state of Montana that shall heretofore have been or may hereafter be formed from portions of another county, shall be entitled to have

the county records affecting or relating to any and all property situate in the county segregated, transcribed from the books of the original county and made a part of the records of the county segregated.

History: En. Sec. 1, p. 217, L. 1893; re-en. Sec. 4166, Pol. C. 1895; re-en. Sec. 2860, Rev. C. 1907; re-en. Sec. 4408, R. C. M. 1921.

References

State ex rel. Lambert v. Cond, 23 M 131, 139, 57 P 1092.

Collateral References

Counties \supset 16 (1).

20 C.J.S. Counties § 35.

16-602. (4409) County commissioners to have records transcribed. It shall be the duty of the county commissioners of any county heretofore formed, or that may be hereafter formed from part of another county, to have so much of the records of the original county as relates to the property situate within the segregated county transcribed as hereinafter provided.

History: En. Sec. 2, p. 217, L. 1893; 2861, Rev. C. 1907; re-en. Sec. 4409, R. C. re-en. Sec. 4167, Pol. C. 1895; re-en. Sec. M. 1921.

16-603. (4410) Commissioners' power to contract. Said county commissioners shall have full power and authority to contract for transcribing the records relating to all property situate within the boundaries of the segregated county, and for that purpose the person or persons engaged in the work of transcribing such records shall have access to all records of the county or counties from which segregated.

History: En. Sec. 3, p. 217, L. 1893; re-en. Sec. 4168, Pol. C. 1895; re-en. Sec. 2862, Rev. C. 1907; re-en. Sec. 4410, R. C. M. 1921.

Collateral References

Counties \supset 113 (4).

20 C.J.S. Counties § 179.

16-604. (4411) Payment for transcribing. Payment for transcribing such records shall be made by the county contracting therefor, by a warrant or warrants payable out of the general fund of such county.

History: En. Sec. 4, p. 217, L. 1893; re-en. Sec. 4169, Pol. C. 1895; re-en. Sec. 2863, Rev. C. 1907; re-en. Sec. 4411, R. C. M. 1921.

Collateral References

Counties \supset 164.

20 C.J.S. Counties § 248.

16-605. (4412) Certificate of transcript. When the transcript of such records herein provided for shall be completed and approved by the county commissioners of such county, they shall be delivered to the county clerk and recorder of the county from which such records were taken, and it shall be the duty of such county clerk and recorder to compare the records so transcribed with the original records as the same appear on the record books of the said original county. The county clerk and recorder to whom the said transcript shall be delivered for comparison shall certify under oath that the said transcribed records are full, complete and exact copies of the original records, and the said county clerk and recorder shall be entitled to six dollars per day for his time actually spent in comparing the said records, to be paid out of the general fund of the county requiring such comparison and certificate.

History: En. Sec. 5, p. 218, L. 1893; 2861, Rev. C. 1907; re-en. Sec. 4412, R. C. re-en. Sec. 4170, Pol. C. 1895; re-en. Sec. M. 1921.

16-606. (4413) Transcribed records to be filed. All records so transcribed, when certified to as being full, complete, and correct, shall be delivered to the county clerk and recorder of the segregated county, and shall be filed in the office of the county clerk and recorder of such segregated county, and shall thereupon become and be a part of the records of such county.

History: En. Sec. 6, p. 218, L. 1893; 2865, Rev. C. 1907; re-en. Sec. 4413, R. C. re-en. Sec. 4171, Pol. C. 1895; re-en. Sec. M. 1921.

16-607. (4414) Effect of transcribed records. A certified copy of the records so transcribed and filed in the office of the county clerk and recorder of any segregated county may be introduced in evidence, and shall have the same force and effect as certified copies of original records.

History: En. Sec. 7, p. 218, L. 1893; References
re-en. Sec. 4172, Pol. C. 1895; re-en. Sec. State ex rel. Lambert v. Coad, 23 M
2866, Rev. C. 1907; re-en. Sec. 4414, R. C. 131, 139, 57 P 1092.
M. 1921.

16-608. (4415) New counties—transfer of action affecting real estate. In all counties heretofore created out of any other county, and in all counties that may be hereafter created, wherever there has been an action or proceeding begun, affecting any real property situate within such new county, whether such action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in such real property so affected by such action or proceeding, requesting the transfer of the files and papers and records of such action or proceeding to the office of the clerk of the district court of the new county, wherein such real property is situated, it shall be the duty of the judge of the district court, in which said action or proceeding was originally begun, to order that a transfer of all the files and papers of such action or proceeding be made to the office of the clerk of the district court of the new county in which such real property is situated; and when such an order of transfer is made, it shall be the duty of the clerk of the district court, wherein such action or proceeding was originally instituted, to transmit all of the files and papers in such action or proceeding, together with a certified copy of all minutes of the court relating to such action or proceeding, to the clerk of such new county in which the real property, the subject matter of such action or proceeding, is situated; and said clerk of the district court of the new county in which said property is situated shall, upon the receipt of such files and papers and certified copies of the minutes of the court, file said papers in his office as transferred files from the original county, and shall enter and transcribe upon his records any final judgment or decree or order contained in such files or papers or records so transferred.

History: En. Sec. 1, Ch. 20, L. 1907; Collateral References
Sec. 2867, Rev. C. 1907; re-en. Sec. 4415, Venue \hookrightarrow 47.
R. C. M. 1921. 92 C.J.S. Venue § 140.

16-609. (4416) New counties—jurisdiction of court. Upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county heretofore created, or that may be hereafter created, in accordance with the provision of this act, the district court of such new

county, in which such files and papers shall have been transferred, shall have the same jurisdiction with reference to said real property for the enforcement of any decree, judgment, or order that may have been entered therein, or for such other proceedings as may be necessary in such action or proceeding, as the district court had in the county wherein such action or proceeding was originally begun.

History: En. Sec. 2, Ch. 20, L. 1907;
Sec. 2868, Rev. C. 1907; re-en. Sec. 4416,
R. C. M. 1921.

Collateral References
Venue \hookrightarrow 80.
92 C.J.S. Venue § 207.

16-610. (4417) New counties—fees of clerk. The clerk of the district court wherein such action or proceeding was originally begun shall be entitled to receive, for transferring such files and papers and certified copy of the minutes and records entered in connection with such action or proceeding, no other fee than at the rate of twenty cents per folio for copies of minutes made by him, and fifty cents for certificate fee; the clerk of the district court of the new county, to which such files and papers may be transferred in accordance with the provisions of this act, shall not be entitled to any fees for the filing of such transferred records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding or for the issuance of any writs or other papers, such clerk shall be entitled to charge the same fees as now provided by law.

History: En. Sec. 3, Ch. 20, L. 1907;
Sec. 2869, Rev. C. 1907; re-en. Sec. 4417,
R. C. M. 1921.

Collateral References
Clerks of Courts \hookrightarrow 19.
14 C.J.S. Clerks of Courts §§ 39, 40.

16-611. (4418) Transcript of records when territory detached from one municipality and added to another. When any territory shall be detached from any county, city, or town in this state and annexed to any other county, city, or town it shall be the duty of the proper officer of such county, city, or town to which said territory so detached shall be annexed, to demand from the proper officer of the county, city, or town having custody of the public records of the territory so detached, a transcript of all public records pertaining to such territory; and it shall be the duty of such officer from whom they shall be demanded to furnish such authenticated transcripts of all such records in his office, which shall be paid for after they shall be so furnished by the county, city, or town to which said territory so detached shall be annexed.

History: En. Sec. 1, Ch. 36, L. 1911;
re-en. Sec. 4418, R. C. M. 1921.

16-612. (4419) Apportionment of indebtedness and credits where territory is detached and annexed. When any territory shall be detached from any county, city, or town of this state, and the same shall be annexed to any other county, city, or town therein, such county, city, or town to which the same shall be annexed shall be liable to the county, city, or town from which the territory was so detached for its just share of liabilities and indebtedness, and shall receive a just share of the credits from the county, city, or town, from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to

the territory from which the same was detached, and the last prior assessment shall be used as a basis in determining the same.

History: En. Sec. 2, Ch. 36, L. 1911;
re-en. Sec. 4419, R. C. M. 1921.

Collateral References

Counties \Rightarrow 16 (2); Municipal Corporations \Rightarrow 36 (4).

20 C.J.S. Counties § 36; 62 C.J.S. Municipal Corporations §§ 78, 79.

16-613. (4420) Collection of taxes in territory taken from one municipality and added to another. When any territory shall be detached from any county, city, or town in this state and be annexed to any other county, city, or town therein, it shall in no manner invalidate or interfere with the collection of taxes in such territory, and they shall be collected by and the returns made to the county to which said territory is attached in the manner provided by law for levying and collecting taxes.

History: En. Sec. 3, Ch. 36, L. 1911;
re-en. Sec. 4420, R. C. M. 1921.

Collateral References

Counties \Rightarrow 16 (4); Municipal Corporations \Rightarrow 36 (4).

20 C.J.S. Counties § 38; 62 C.J.S. Municipal Corporations § 79.

16-614. (4421) Transfer of records on creation of new county. Any new county heretofore formed or that may hereafter be formed shall be entitled to all records, maps, plats, and charts of any old county, any part of whose territory is included in such new county, which records, maps, plats, or charts relate to the classification of lands for taxation purposes and apply exclusively to territory included in such new county, and such records, maps, plats, and charts shall be delivered by the officer or board of such old county to the corresponding officer or board of such new county upon proper receipt therefor, and shall be made and become a part of the records of such new county, to all intents and purposes the same as if such records, maps, plats, and charts had been originally prepared and made by such new county; and provided, further, that in the event territory is taken from one county and added to another county such plats and records covering such territory taken, shall be transferred to the enlarged county; provided, that if any portion of the cost of preparing such records, maps, plats, or charts remain unpaid, said new county or enlarged county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921;
re-en. Sec. 4421, R. C. M. 1921.

16-615. Preparation of list of delinquent taxes not heretofore transcribed on creation of new county. From and after the effective date of this act the county commissioners of any county heretofore formed from any county or counties in this state, hereinafter referred to as "new counties," may cause to be transcribed from the delinquent tax records of such county or counties from which such new county was formed, a list of all delinquent taxes which were in existence and a lien upon lands in the new county at the time of its creation, and which have not heretofore been transcribed, and which lien has not been heretofore released by the payment of such delinquent taxes. Such list shall show the description of the

lands upon which the taxes were delinquent, the original amount of the tax and the tax sale certificate number under which said land was struck off to the parent county or counties, and the name of the person to whom such lands were assessed, and if such tax sale certificate has been assigned by the county, the name and address of the assignee as shown in such assignment. Upon completion of such transcription, such list shall be delivered to the treasurer of the new county.

History: En. Sec. 1, Ch. 122, L. 1945.

16-616. Notice to persons currently assessed. Upon receipt of such information by the treasurer of the new county, said treasurer shall, within a reasonable time thereafter, but not later than the date when the next current tax notices are required to be mailed out, notify the person or persons to whom said lands are currently assessed, except in cases hereinafter referred to, of such delinquency and the manner in which it may be paid as hereinafter provided.

History: En. Sec. 2, Ch. 122, L. 1945.

16-617. Redemption when by payment of original tax only. That at any time not later than the first day of July, 1947, any lawful redemptioner including any owner, mortgagee or other person having a legal or equitable interest in said real estate or any part thereof, heretofore struck off to the parent county for delinquent taxes, and when no assignment of said delinquent tax sale certificate has been made, and no subsequent sale has been made in the new county, shall be permitted to redeem said property from said tax sale or sales by paying the original amount of the tax, without payment of any interest or penalty thereon.

History: En. Sec. 3, Ch. 122, L. 1945.

16-618. Duty of county treasurer of such new county. After transcription of said record of delinquent taxes has been made, it shall be the duty of the county treasurer of the new county to collect said delinquent taxes in the manner provided by law, and the treasurer of the parent county shall have no further authority in relation to the collection of said taxes. All payments for delinquent taxes hereinbefore referred to shall be apportioned between the parent county and the new county in the manner provided for the apportionment of taxes by the law regulating the creation of new counties by petition and election, or as provided by the law creating any particular county.

History: En. Sec. 4, Ch. 122, L. 1945.

16-619. Transcription of records, how made. The transcription of records herein provided for shall be made and payment therefor shall be had in the manner provided by sections 16-601 to 16-626, inclusive. All the provisions of said sections not inconsistent with the terms of this act are hereby made applicable to the transcription of said records and the disposal of the delinquent taxes herein referred to.

History: En. Sec. 5, Ch. 122, L. 1945.

16-620. Old county to clear tax liens—certification. In all cases where, since its creation, the new county has applied for and received tax deed to

any property on which a lien existed in the parent county by reason of delinquent taxes, upon certification of that fact by the county commissioners of the new county, the county commissioners of the parent county shall, by order entered in its minutes, release and cancel such lien and certify its action to the board of county commissioners of the new county, which certificate shall be filed and properly indexed in the records of the new county and shall operate to clear the title to the property therein described of any cloud thereon existing by reason of such tax delinquency in the parent county.

History: En. Sec. 6, Ch. 122, L. 1945.

16-621. County treasurer and other taxing officials relieved from certain liability. County treasurers, boards of county commissioners, and other county taxing officials and their bondsmen are hereby relieved from any and all obligation by reason of the failure of said officials to notify the owners of the lands hereinbefore referred to, of the existence of such tax delinquencies, or for the failure to apply for tax deeds, or any acts in conjunction herewith, when the same has been barred by statutes of limitation.

History: En. Sec. 7, Ch. 122, L. 1945.

16-622. (4422) Jury list for current year in new counties. Whenever a new county has been or may hereafter be created out of territory formerly embraced in any existing county or counties of the state, the jury list for such new county for the current year, and until the regular jury commission for such new county shall certify for the succeeding year the new jury list in accordance with the provisions of sections 93-1401 to 93-1406 of this code, shall be as follows:

History: En. Sec. 1, Ch. 129, L. 1919;
re-en. Sec. 4422, R. C. M. 1921.

Compiler's Note

Section 93-1405, included in the reference to sections 93-1401 to 93-1406 in this section, was repealed by Sec. 10, Ch. 168, Laws 1957.

16-623. (4423) Duty of clerk of court in the old county to certify jury list to clerk of new county. The clerk of court of the county from which said new county may be segregated, or in the event of such new county being segregated from two or more counties, the clerks of court of each of such counties shall take the names of such persons as appear upon the jury list for such year, which may have been certified to him or to them by the jury commission or commissions of his or their respective county or counties to be residents of the territory embraced in such new county, and shall certify the same to the clerk of court of the new county. Such names shall then constitute the jury list for such new county for the period as aforesaid.

History: En. Sec. 2, Ch. 129, L. 1919;
re-en. Sec. 4423, R. C. M. 1921.

16-624. (4424) Time within which jury list to be made and certified by clerks of old county. Such new list shall be made and certified by such clerk or clerks of the existing county or counties as soon after the creation of such new county as may be practicable, and in any event within five

days after request therefor shall be made by the clerk of the district court of the new county.

History: En. Sec. 3, Ch. 129, L. 1919;
re-en. Sec. 4424, R. C. M. 1921.

16-625. (4425) Removal of names from jury box of old county. The clerk or clerks of the district court of the county or counties from which such new county has been or may hereafter be created shall, after the creation of such new county, remove from the list of jurors and jury boxes of his or their county or counties the names of all persons upon the list which may have been filed with him or them by the jury commission who may appear to him or them to be residents of the new county and so certified by him as aforesaid.

History: En. Sec. 4, Ch. 129, L. 1919;
re-en. Sec. 4425, R. C. M. 1921.

Collateral References

Jury \hookrightarrow 64.

50 C.J.S. Jurics § 162.

16-626. (4426) Duty of clerk of court in new county regarding jury lists. The clerk of court of the new county shall then file and prepare his jury list and boxes in accordance with the general law pertaining to the duties of clerks of court with relation to jury lists and boxes.

History: En. Sec. 5, Ch. 129, L. 1919;
re-en. Sec. 4426, R. C. M. 1921.

Collateral References

Jury \hookrightarrow 62 (1).

50 C.J.S. Jurics § 153.

CHAPTER 7

CHANGE OF NAME OF COUNTIES

- Section 16-701. Name of any county may be changed, how.
16-702. Petitions for change of name to be determined in district court.
16-703. Petition for change of name of county—by whom signed and what to specify.
16-704. Form of petition.
16-705. Comparison of signatures and certificate of county clerk—time during which petition may be retained.
16-706. Publication and posting of copies of petition.
16-707. Hearing of petition and objections thereto—proceedings.
16-708. Duty of clerk of court upon rendition of decree changing name of county.
16-709. Change in name in official records, forms, blanks, etc.
16-710. Records, writs, processes, actions, etc., to be the property and inure to benefit of county under new name.
16-711. Vested rights and existing laws not affected by change in name.
16-712. Assumption of indebtedness, bonds and contracts by county under new name.
16-713. Terms of court.
16-714. Retention of office by county, township and district officials—county boundaries.

16-701. (4427) Name of any county may be changed, how. The name, designation, appellation, cognomen, or title of any county in this state may be changed to any other name, designation, appellation, cognomen, or title, as in this act provided.

History: En. Sec. 1, Ch. 113, L. 1917;
re-en. Sec. 4427, R. C. M. 1921.

Collateral References

Counties \hookrightarrow 3.

20 C.J.S. Counties § 5.

11-203. (4961) Organization of cities and towns—petition and census. Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two thirds ($\frac{2}{3}$) of the qualified electors, but not more than three hundred (300) such electors who are residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof each of which shall contain one hundred fifty (150) qualified electors or more and, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal corporation may be formed unless the number of inhabitants is three hundred or upwards; and unless the boundary of the proposed territory to be incorporated is more than three (3) miles from the boundary, measured from the nearest point between the two (2), of any presently incorporated city or town or there is presented to the board, appropriate evidence that any presently incorporated city or town within three (3) miles which legally could annex, but has refused to annex the proposed territory.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 86 and once by Ch. 515. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a

composite section embodying the changes made by both amendments.

Amendments

Chapter 86, Laws of 1973, added the clause following the semicolon in the last sentence of this section.

Chapter 515, Laws of 1973, substituted "two-thirds ($\frac{2}{3}$) of the qualified electors, but not more than three hundred (300) such electors who are" for "fifty qualified electors" in the first sentence; inserted "each of which shall contain one hundred fifty (150) qualified electors or more and"

CHAPTER 30

ENTRY TOWNSITES ON PUBLIC DOMAIN FOR UNINCORPORATED CITIES AND TOWNS

- Section 11-3001. District judge to enter at land office.
11-3002. Estimate of expenses.
11-3003. Survey of lands.
11-3004. Plats as public records—contents of plats.
11-3005. Notice of survey to be given.
11-3006. What dedicated to public use.
11-3007. What plat must show.
11-3008. Assessment for expenses.
11-3009. Disposition of surplus funds.
11-3010. Claimants to make affidavits.
11-3011. Additional assessments to pay expenses.
11-3012. Deeds to be delivered in six months—adverse claims.
11-3013. Mining claims.
11-3014. Adverse claims—actions for possession.
11-3015. Notice of filing plat.
11-3016. Sale of delinquent lands.
11-3017. Redemption.
11-3018. Laying out and sale of unoccupied or unclaimed lands.
11-3019. School lots.
11-3020. Vacancy in office of judge.
11-3021. Clerical work must be performed by clerk of district court.
11-3022. Accounts of judge.
11-3023. Deposit of books with county clerk.
11-3024. Informalities or irregularities not to invalidate—legalizing deeds.
11-3025. City or townsite on school lands.
11-3026. District judge authorized to execute deeds—procedure.

11-3001. (5331) District judge to enter at land office. It is the duty of the judge of the district court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situated in the county of such district judge, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and the regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this chapter, and the intention of the act of Congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven," and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of Congress.

History: En. Sec. 5100, Pol. C. 1895; re-en. Sec. 3514, Rev. C. 1907; re-en. Sec. 5331, R. C. M. 1921.

NOTE.—For earlier acts, see Secs. 2011 to 2030, Fifth Division Compiled Statutes 1887.

Compiler's Note

Act of March 2, 1867, ch. 177, 14 Stat. 541 is compiled in the United States Code as Tit. 43, sec. 718 et seq.

Unincorporated Town as Entity

In this section there is a distinct recognition of a town as an entity without incorporation or municipal charter. State ex rel. Powers v. Dale, 47 M 227, 229, 131 P 670.

Collateral References

Municipal Corporations 42; Public Lands 39, 41; Towns 4.

62 C.J.S. Municipal Corporations § 83; 73 C.J.S. Public Lands § 57; 87 C.J.S. Towns § 11.

11-3002. (5332) Estimate of expenses. The district judge of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any unincorporated town, whose names appear upon the assessment roll for the year preceeding such application—which petition shall set forth the existence, name, and locality of such town; whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands the quarter-sections or lesser subdivisions covered thereby must be stated; the estimated number of its inhabitants; the number of separate lots or parcels of land within such townsite, and the amount of land to which they are entitled under said act of Congress—must estimate the cost of entering such land, and of the survey and recording of the same, and must endorse such estimate upon said petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said district judge may cause an enumeration of the inhabitants of such town to be made by some competent person, who must be appointed for that purpose by such judge; and such enumeration must be returned by the person making the same, exhibiting therein names of all the heads of families and occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his oath, to the judge.

History: En. Sec. 5101, Pol. C. 1895; re-en. Sec. 3515, Rev. C. 1907; re-en. Sec. 5332, R. C. M. 1921.

11-3003. (5333) Survey of lands. The judge must thereupon cause a survey to be made by some competent person of the lands which the inhabitants of said town may be entitled to claim under the said act of Congress, located according to the legal subdivision of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments. Such surveys must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, levees, or parks, cemeteries, and commons, as the same exist, and have been heretofore dedicated in any manner to public use; and by measurement, the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association, within said townsite, must be designated on the plat, showing the name or names of the possessor or occupant and claimant, if other than the occupant, of each particular lot and parcel of land. In case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines (in different color from the body of the plat) of such part of any premises so disputed or claimed adversely. A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which shall be duly certified under oath by the surveyor, one of which shall be filed with the county clerk of the county wherein the town is situated, one must be deposited with the judge, and one must be deposited with the justice of the peace resident in or nearest to such town.

History: En. Sec. 5102, Pol. C. 1895;
re-en. Sec. 3516, Rev. C. 1907; re-en. Sec.
5333, R. C. M. 1921.

Collateral References
Municipal Corporations 12 (1); Public
Lands 39 (6).
62 C.J.S. Municipal Corporations § 20;
73 C.J.S. Public Lands § 63.

11-3004. (5334) Plats as public records—contents of plats. These plats are public records, and must be accompanied with a copy of the field notes, and the county clerk shall make a record thereof in a book to be kept by him for that purpose. The surveyor must number the blocks, as divided by the roads and streets opened at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said townsite surveyed as herein provided, which said numbers are a sufficient description of any parcel of land in said plat when mentioned by reference to such town plats.

History: En. Sec. 5103, Pol. C. 1895;
re-en. Sec. 3517, Rev. C. 1907; re-en. Sec.
5334, R. C. M. 1921.

11-3005. (5335) Notice of survey to be given. Before proceeding to make such survey, at least ten days' notice must be given by the judge, by posting within the limits of such townsite not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in a newspaper published in such town, if one there be. The survey of said town lands must be made to the best advantage, and at the least expense to the holders and claimants thereof; and

the said judge is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

History: En. Sec. 5104, Pol. C. 1895;
re-en. Sec. 3518, Rev. C. 1907; re-en. Sec.
5335, R. C. M. 1921.

11-3006. (5336) What dedicated to public use. All streets, roads, lanes, and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked, and platted on the map of any townsite, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county clerk, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city.

History: En. Sec. 5105, Pol. C. 1895;
re-en. Sec. 3519, Rev. C. 1907; re-en. Sec.
5336, R. C. M. 1921.

Unincorporated Town as Entity

In this section there is a distinct recognition of a town as an entity without incorporation or municipal charter. State ex rel. Powers v. Dale, 47 M 227, 229, 131 P 670.

11-3007. (5337) What plat must show. Such plat must show the same matters as are contained in section 11-602 of this code, and must be made, filed and kept in the same manner as prescribed in section 11-609 of this code.

History: En. Sec. 5106, Pol. C. 1895;
re-en. Sec. 3520, Rev. C. 1907; re-en. Sec.
5337, R. C. M. 1921.

11-3008. (5338) Assessment for expenses. Each lot or parcel of said land having thereon valuable improvements, or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, must be rated and assessed by the judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, must be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre, and not exceeding one-quarter of an acre in area, must be rated and assessed at the sum of two dollars; and each lot and parcel of such lands exceeding one-quarter of an acre, and not exceeding one-half of one acre in area, must be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half an acre in area must be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not be otherwise improved, or uninclosed, claimed by any persons, corporation, or association, must be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where, upon one parcel of land, there are two or more separate buildings, occupied or used ordinarily as dwell-

ings, or for business purposes, each such building, for the purposes of this section, is considered as standing on a separate lot of land, but the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said town lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry, and purchase, and the costs and expenses attendant upon the making of such survey and recording thereof.

History: En. Sec. 5107, Pol. C. 1895; re-en. Sec. 3521, Rev. C. 1907; re-en. Sec. 5338, R. C. M. 1921.

11-3009. (5339) Disposition of surplus funds. Any sum of money remaining, after defraying all the necessary expenses of location, entry, surveying, platting, and recording of lands, and the expenses of the judge hereinafter mentioned, must be deposited in the county treasury, to the credit of the fund of each particular town, and kept separate by the county treasurer, to be paid out by him only on the written order of such judge, until after the expiration of the time for a final settlement of the affairs of such town lands, as hereinafter provided, at which time any and all balances of moneys so remaining to the credit of each town shall be transferred by such county treasurer to the school fund of the particular school district in which said town is situated.

History: En. Sec. 5108, Pol. C. 1895; re-en. Sec. 3522, Rev. C. 1907; re-en. Sec. 5339, R. C. M. 1921.

11-3010. (5340) Claimants to make affidavits. Every person, corporation, or association, claimant of any town lot or parcel of land within the limits of such townsite, must present to the judge, within six months after the plat has been filed in the office of the county clerk, his, her, or its affidavit, verified in person, or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof, as against all other persons, to the best of his knowledge and belief, to which must be attached a copy of so much of the plat of the townsite as will fully exhibit the particular lot or parcel of land so claimed, with the abutments; and every such claimant, at the time of filing such affidavit, must pay to such judge such sum of money as such judge shall thereon certify to be due for the assessment mentioned in section 11-3008 of this code, together with the further sum of five dollars, to be appropriated to the payment of the expenses incurred in carrying out the provisions of this chapter, and the judge must thereupon give to such claimant a certificate containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The judge must procure a bound book for each town in his county, wherein he must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive

order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

History: En. Sec. 5109, Pol. C. 1895;
re-en. Sec. 3523, Rev. C. 1907; re-en. Sec.
5340, R. C. M. 1921.

11-3011. (5341) Additional assessments to pay expenses. If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the judge must estimate the deficiency, and assess such deficiency pro rata upon all the lots and parcels of lands in such town, and declare the same upon the basis set down in section 11-3008 of this code, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for is issued.

History: En. Sec. 5110, Pol. C. 1895;
re-en. Sec. 3524, Rev. C. 1907; re-en. Sec.
5341, R. C. M. 1921.

11-3012. (5342) Deeds to be delivered in six months — adverse claims. At the expiration of six months after the issuance of the certificate mentioned in the preceding section, if there has been no adverse claim filed in the meantime, the judge must make, execute, acknowledge, and deliver to each claimant or to his, her, or its heirs, administrators, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed. No conveyance of any such lands, made as in this chapter provided, concludes the rights of third persons; but such third persons may have their actions in the premises to determine the alleged interest in such lands against such grantee, his heirs, or assigns, to which they may deem themselves entitled either in law or equity. No action for the recovery of the possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her, or its assigns, unless such action is commenced within two years after such deeds have been filed for record in the office of the county clerk of the county where such lands are situated. Nothing herein must be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate when such action is barred by law at the time of the passage of this code.

History: En. Sec. 5111, Pol. C. 1895; re-en. Sec. 3525, Rev. C. 1907; re-en. Sec. 5342, R. C. M. 1921.

Collateral References
Public Lands 39 (5), (8).
73 C.J.S. Public Lands § 68.

11-3013. (5343) Mining claims. Whenever mining claims have been located and held bona fide for mining purposes, such mining rights, according to the metes and bounds located and claimed, must not in any manner be affected by the provisions of this chapter; nor must any sale be made nor any title be conveyed by reason of any sale or pretended sale of such lands so claimed for mining purposes, until after the occupancy of such mining claims has been abandoned by the holders thereof.

History: En. Sec. 5112, Pol. C. 1895;
re-en. Sec. 3526, Rev. C. 1907; re-en. Sec.
5343, R. C. M. 1921.

11-3014. (5344) Adverse claims — actions for possession. In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the judge by an agreement in writing, specifying particularly the subject matter in dispute, and may agree that his decision shall be final; in which case the said judge may hear the proofs, and must execute a deed in accordance therewith; but in all other cases of adverse claim, the party out of possession must commence his action in a court of competent jurisdiction within six months after the filing of the town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the judge, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the judge must execute and deliver a deed of such premises in accordance with the judgment. In case no such action is commenced within the time herein prescribed, the judge must deliver his deed to the party in possession, as provided in section 11-3012 of this code.

History: En. Sec. 5113, Pol. C. 1895;
re-en. Sec. 3527, Rev. C. 1907; re-en. Sec.
5344, R. C. M. 1921.

Cross-Reference

Application of Montana Rules of Civil
Procedure to this section, see M. R. Civ.
P., Rule 81 (a), Table A.

11-3015. (5345) Notice of filing plat. The judge must give public notice, by advertisement, for four weeks in some newspaper published in the county, if one there be, and if there be no newspaper published in said county, then by not less than five written or printed notices posted within the limits of such townsite, that the plat thereof has been filed in the county clerk's office; and if any person, company, or association, or other claimants of lands in such town, fails, neglects, or refuses to make application to the judge for a deed, and to pay the sum specified, within six months after the filing of said plat, the judge must enter on his book the names of all such persons, with a description of the property or premises, and certify the same as delinquent for the amount of assessments certified to by such judge as due under section 11-3003 of this code; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the judge must advertise all such lots and parcels of land for sale in the same manner as real estate is required to be advertised under execution.

History: En. Sec. 5114, Pol. C. 1895;
re-en. Sec. 3528, Rev. C. 1907; re-en. Sec.
5345, R. C. M. 1921.

11-3016. (5346) Sale of delinquent lands. At the time of sale mentioned in said advertisement, the judge must sell all such parcels of land so remaining delinquent, by public auction, to the highest bidder for cash, at some public place within the limits of said townsite; and he must give to the purchaser at such sale a certificate of his purchase, setting forth therein a description of the premises sold, the amount paid, and that the same is subject to redemption, as prescribed in the next section; but no sale must be made for less than the whole amount of assessments, and

the costs of making the sale, which costs must be divided pro rata among the several parcels offered for sale.

History: En. Sec. 5115, Pol. C. 1895;
re-en. Sec. 3529, Rev. C. 1907; re-en. Sec.
5346, R. C. M. 1921.

11-3017. (5347) Redemption. At any time within six months after such sale, the original claimant is entitled to redeem such premises by paying to the purchaser, or to the judge for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs, or assigns, is entitled to demand and receive from the judge a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs, or assigns, to a writ of assistance from the district court having jurisdiction of the premises.

History: En. Sec. 5116, Pol. C. 1895;
re-en. Sec. 3530, Rev. C. 1907; re-en. Sec.
5347, R. C. M. 1921.

11-3018. (5348) Laying out and sale of unoccupied or unclaimed lands. If there be any unoccupied or vacant unclaimed lands within the limits of such city or townsite, the judge may cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, school-house lots, parks and levees, and cause all necessary roads, streets, lanes, and alleys to be laid out through the same and dedicated to public use; and the judge may sell the same in suitable parcels to possessors of adjoining lands residing thereon, or to other persons, at a price not less than ten dollars per lot; and in case two or more claimants apply for the same lot or lots, he must sell the same by auction to the highest bidder for cash.

If any such lots remain unsold at the end of six months after the filing of the town plat, the said judge must sell said unclaimed lots, on application, at public auction to the highest bidder for cash, and give deeds therefor to the several purchasers, but, nevertheless, the judge may sell and he is hereby empowered to sell and execute deeds for any unoccupied, vacant, and unsurveyed portions of a townsite, without first causing the same to be surveyed or platted into blocks, lots, roads, streets, and alleys, or otherwise subdivided, whenever it shall be made to appear to the judge, by a written application to purchase the same, established by evidence that the unsurveyed portions of the townsite sought to be purchased are irregular and fragmentary strips or pieces of land within the exterior boundaries of the townsite, and that they are unoccupied and vacant, and that it would be an unnecessary expense and impracticable to cause the same to be first surveyed or platted into blocks, lots, roads, streets, and alleys, or otherwise subdivided; and the sale of such unoccupied, vacant, and unsurveyed portions of a townsite shall be conducted, as near as may be, in the manner provided for the sale of town lots, except that the price to be paid for any one irregular, fragmentary, unoccupied, vacant, and unsurveyed portion of a townsite shall not be less than one hundred dollars; and all deeds heretofore executed by the judge who has

sold and conveyed irregular, fragmentary, unoccupied, vacant, and unsurveyed portions of a townsite are hereby confirmed and made lawful, valid, and effectual as if such, or any, unsurveyed portion of the townsite had first been surveyed and platted into blocks, lots, roads, streets, and alleys or otherwise subdivided.

History: En. Sec. 5117, Pol. C. 1895; amd. Sec. 1, Ch. 99, L. 1903; amd. Sec. 1, Ch. 130, L. 1907; re-cn. Sec. 3531, Rev. C. 1907; amd. Sec. 1, Ch. 22, L. 1911; re-cn. Sec. 5348, R. C. M. 1921.

References

State ex rel. Hicklin v. Webster, 28 M 104, 109, 72 P 295.

11-3019. (5349) School lots. All school lots and parcels of land reserved for school purposes, as aforesaid, by order of the judge, must be conveyed to the school trustees of the school district in which such town is situate, without cost or charge of any kind whatever.

History: En. Sec. 5118, Pol. C. 1895; re-cn. Sec. 3532, Rev. C. 1907; re-cn. Sec. 5349, R. C. M. 1921.

11-3020. (5350) Vacancy in office of judge. In case a vacancy occurs from any cause in the office of district judge during the pendency of any of the proceedings to be taken under this chapter, upon the election or appointment of a successor, it is the duty of the county clerk to make out a certificate, under seal, showing the facts and name of such successor, and file the same in his office, and record such certificate in a book of deeds, and attach the original to the townsite book in his office.

History: En. Sec. 5119, Pol. C. 1895; re-cn. Sec. 3533, Rev. C. 1907; re-cn. Sec. 5350, R. C. M. 1921.

11-3021. (5351) Clerical work must be performed by clerk of district court. All the clerical work under this chapter must be performed by the clerk of the district court, and the fees received therefor paid into the county treasury.

History: En. Sec. 5120, Pol. C. 1895; re-cn. Sec. 3534, Rev. C. 1907; re-cn. Sec. 5351, R. C. M. 1921.

11-3022. (5352) Accounts of judge. Every district judge, when fulfilling the duties imposed upon him by the act of Congress aforesaid and by this chapter, must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the county treasurer of his county, and at the end of one year from the time when the town plat of any town is filed in the county clerk's office, he must settle up all the affairs pertaining to said town, and pay over to the county treasurer all moneys belonging to said town, for the use and benefit of the school district in which said town may be situate. If any claims to lands in such town are the subject of litigation, the same must be finally settled by such judge whenever the final judgment has been rendered.

History: En. Sec. 5121, Pol. C. 1895; re-cn. Sec. 3535, Rev. C. 1907; re-cn. Sec. 5352, R. C. M. 1921.

11-3023. (5353) Deposit of books with county clerk. Whenever the affairs of any such town shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of his county, to be thereafter kept in the custody of the county clerk as public records.

History: En. Sec. 5122, Pol. C. 1895;
re-en. Sec. 3536, Rev. C. 1907; re-cn. Sec.
5353, R. C. M. 1921.

11-3024. (5354) Informalities or irregularities not to invalidate—legalizing deeds. No mere informality, failure, or omission, on the part of any person or officer named in this chapter, invalidates the acts of such person or officer, but every certificate or deed granted to any person, pursuant to the provisions of this chapter, is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed. And if the original or first deed executed by the district judge granting and conveying any lot or lots be lost or destroyed, or cannot be found, and if such deed or deeds so executed have not been recorded in the office of the county clerk of the county in which the property is situated, the district judge shall, upon written application stating the facts, execute and deliver another deed or deeds, as the case may be, to the purchaser of such lot or lots, or to his heirs or grantees, upon a showing sustained by evidence satisfactory to the district judge that the original or first deed or deeds were executed and have been lost or destroyed, or cannot be found, and have not been recorded; and all deeds heretofore executed by the district judge in lieu of the original or first deed or deeds, which have been lost or destroyed, or which could not be found, and which have not been recorded in the office of the county clerk of the county in which the property is situated, are hereby legalized, confirmed, and made valid and effectual, as if such deed or deeds were the original, first, and only deed or deeds executed therefor.

History: En. Sec. 5123, Pol. C. 1895;
re-en. Sec. 3537, Rev. C. 1907; amd. Sec.
1, Ch. 23, L. 1911; re-en. Sec. 5354, R. C. M.
1921.

Collateral References

Municipal Corporations 29 (1); Public
Lands 39 (1).
62 C.J.S. Municipal Corporations § 68;
73 C.J.S. Public Lands § 71.

11-3025. (5355) City or townsite on school lands. When the lands of such city or town are on a school section or subdivision thereof, and are owned by the state, the council may procure title, and purchase the same from the state, and dispose of the same in the manner provided in this chapter for disposing of lands purchased from the United States.

History: En. Sec. 5124, Pol. C. 1895;
re-en. Sec. 3538, Rev. C. 1907; re-en. Sec.
5355, R. C. M. 1921.

11-3026. (5356) District judge authorized to execute deeds—procedure. Wherever an entry has heretofore been made at a land office by a probate court of any county in the territory, now state of Montana, for a tract of land for a townsite, under the provisions of an act of Congress entitled, "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred sixty-seven, or

other and subsequent acts of Congress relating to entering lands for townsite purposes, and such entry shall have been allowed and patent therefor shall have been issued by the United States to such probate court, or a judge thereof and it shall appear to the district judge of the county in which such townsite is situated by a verified petition filed with the clerk of said district court, that no deed has been issued by the probate judge of such county or the district judge thereof as ex officio probate judge, for any lot or tract of land situated in such townsite other than streets, alleys, parks, or school sites, or that a deed for any such lot or tract has been issued, but has not been recorded, and has been lost or cannot be found, the district judge shall set a day for the hearing of said petition, and cause notice thereof to be published in a newspaper published in the county wherein such lands are situated for four successive weeks, and upon proof of such publication being made, and at such hearing shall examine such petition and claim thereunder, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and if the district judge shall find that the claimant or claimants is in possession of such lot or tract of land or shall by reference to abstracts of title or other evidence produced in support thereof, find that the title to such lot or tract of land has been derived and deraigned from the person or persons who may have originally entered such lot or purchased the same at a sale thereof, as provided by the laws of the territory of Montana, or the state of Montana, and no conflicting claims shall have been filed, the said district judge shall, upon the payment of the fees originally provided for the issuance of a deed for such lot or lots, proceed forthwith to make and issue to such claimant or claimants a good and sufficient deed for such lot or tract of land.

History: En. Sec. 1, Ch. 9, L. 1919;
re-en. Sec. 5356, R. C. M. 1921.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 51(a), Table A.

11-203. (4961) Organization of cities and towns—petition and census. Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two thirds ($\frac{2}{3}$) of the qualified electors, but not more than three hundred (300) such electors who are residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof each of which shall contain one hundred fifty (150) qualified electors or more and, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal corporation may be formed unless the number of inhabitants is three hundred or upwards; and unless the boundary of the proposed territory to be incorporated is more than three (3) miles from the boundary, measured from the nearest point between the two (2), of any presently incorporated city or town or there is presented to the board, appropriate evidence that any presently incorporated city or town within three (3) miles which legally could annex, but has refused to annex the proposed territory.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 86 and once by Ch. 515. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a

composite section embodying the changes made by both amendments.

Amendments

Chapter 86, Laws of 1973, added the clause following the semicolon in the last sentence of this section.

Chapter 515, Laws of 1973, substituted "two-thirds ($\frac{2}{3}$) of the qualified electors, but not more than three hundred (300) such electors who are" for "fifty qualified electors" in the first sentence; inserted "each of which shall contain one hundred fifty (150) qualified electors or more and"

Brown v. Foster, 48 M 114, 118, 133 &
.93.

CHAPTER 29

ENTRY TOWNSITES ON PUBLIC DOMAIN FOR INCORPORATED CITIES AND TOWNS

- Section 11-2901. Council to enter land in United States land office.
11-2902. Filing approved plat.
11-2903. Survey.
11-2904. Plat must be made in duplicate—contents.
11-2905. Notice of survey.
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11-2909. Claims for lands.
11-2910. Deficit in expenses—mode of collection.
11-2911. Deed to be given after six months—adverse claims.
11-2912. Mining claims.
11-2913. Settlement of adverse claims.
11-2914. Notice of filing plat.
11-2915. Sale of delinquent lands.
11-2916. Redemption.
11-2917. Unclaimed lands.
11-2918. School lots.
11-2919. Payment of expenses—disposition of surplus moneys.
11-2920. Informality not to invalidate.
11-2921. City or townsite on school lands.

11-2901. (5310) Council to enter land in United States land office.
It is the duty of the city or town council of any city or town in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes of proceedings, at a regular meeting, to authorize the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this article and the intentions of the act of Congress of the United States en-

titled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and to make proof when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of Congress.

History: En. Sec. 5060, Pol. C. 1895; 541 is compiled in the United States Code re-en. Sec. 3493, Rev. C. 1907; re-en. Sec. as Tit. 43, sec. 718 et seq.
5310, R. C. M. 1921.

Compiler's Note

Act of March 2, 1867, ch. 177, 14 Stat.

Collateral References

Municipal Corporations 42; Towns 4.
62 C.J.S. Municipal Corporations § 83;
87 C.J.S. Towns § 11.

11-2902. (5311) Filing approved plat. The corporate council of every city and town, situated upon the public lands of this state, must, within three months after date of receipt at the United States district land office of the approved plat of the township, embracing the lands upon which the town or city is situated, file in said land office an application in writing, describing the tract of land thus occupied, and thereafter make proof and payment for the tract in the manner required by law.

History: En. Sec. 5061, Pol. C. 1895;
re-en. Sec. 3494, Rev. C. 1907; re-en. Sec.
5311, R. C. M. 1921.

11-2903. (5312) Survey. The said council must, after the filing of the application, if not previously done, cause a survey to be made by some competent person of the lands which the inhabitants of said city or town may be entitled to claim under the said act of Congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated in any manner to public use, and by measurement, the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said city or townsite must be designated on the map, showing the name or names of the possessor or occupants and claimants if other than the occupant of each particular lot and parcel of land; and in case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely.

History: En. Sec. 5062, Pol. C. 1895;
re-en. Sec. 3495, Rev. C. 1907; re-en. Sec.
5312, R. C. M. 1921.

11-2904. (5313) Plat must be made in duplicate—contents. A plat thereof must be made in duplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county clerk of the county wherein the city or town is situated, and one must be deposited with the city or town clerk. These plats shall be considered public records, and must each be accompanied with a copy of the field notes, and the county clerk must make a

record thereof in a book to be kept by him for that purpose. The said surveyor must number the blocks as divided by the roads and streets opened at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats, field notes, and records.

History: En. Sec. 5063, Pol. C. 1895;
re-en. Sec. 3496, Rev. C. 1907; re-en. Sec.
5313, R. C. M. 1921.

11-2905. (5314) Notice of survey. Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or townsite not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in any newspaper or newspapers published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage, and at the least expense to the holders and claimants thereof; and the council is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

History: En. Sec. 5064, Pol. C. 1895;
re-en. Sec. 3497, Rev. C. 1907; re-en. Sec.
5314, R. C. M. 1921.

11-2906. (5315) What dedicated to public use. All streets, roads, lanes and alleys, public squares, school lots, cemeteries, commons, parks, and levees, surveyed, marked, and platted on the map of any city or townsite, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use by the filing of such city or town plat in the office of the county clerk, and become the property of such town or city, and be subject to the control of the council or other municipal authority of such town or city.

History: En. Sec. 5065, Pol. C. 1895;
re-en. Sec. 3498, Rev. C. 1907; re-en. Sec.
5315, R. C. M. 1921.

11-2907. (5316) What plat must show. Such plat must show such matters as are contained in section 11-602 of this code, and must be made, kept, and filed in the same manner as provided in section 11-609 of this code.

History: En. Sec. 5066, Pol. C. 1895;
re-en. Sec. 3499, Rev. C. 1907; re-en. Sec.
5316, R. C. M. 1921.

11-2908. (5317) Assessment to pay expenses. Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre, and not exceeding

one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre, and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not otherwise be improved, or uninclosed, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where, upon one parcel of land, there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and be paid by him into the city or town treasury.

History: En. Sec. 5067, Pol. C. 1895;
re-en. Sec. 3500, Rev. C. 1907; re-en. Sec.
5317, R. C. M. 1921.

11-2909. (5318) Claims for lands. Every person, company, corporation, or association, claimant of any city or town lot or parcel of land within the limits of such city or townsite, must present to the council, by filing the same with the clerk thereof, within six months after the plat has been filed in the office of the county clerk, his, her, or its affidavit, verified in person or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof as against all other persons, to the best of his knowledge and belief, to which must be attached a copy of so much of the plat of said city or townsite as will fully exhibit the particular lot or parcel of land so claimed, with the abutments; and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall thereon certify to be due for the assessment mentioned in the preceding section, together with the further sum of five dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this chapter, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

History: En. Sec. 5068, Pol. C. 1895;
re-en. Sec. 3501, Rev. C. 1907; re-en. Sec.
5318, R. C. M. 1921.

11-2910. (5319) Deficit in expenses—mode of collection. If it is found that the amounts hereinbefore specified as assessments and fees for cost and expenses prove to be insufficient to cover and defray all the neces-

sary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such city or town, and declare the same upon the basis set down in section 11-2908 of this code; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for is issued.

History: En. Sec. 5069, Pol. C. 1895;
re-en. Sec. 3502, Rev. C. 1907; re-en. Sec.
5319, R. C. M. 1921.

11-2911. (5320) Deed to be given after six months—adverse claims. At the expiration of six months after the issuance of such certificate, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, or to his, her, or its heirs, administrator, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this chapter provided concludes the rights of third persons; but such third persons may have their action in the premises to determine their alleged interest in such lands against such grantee, his heirs or assigns, to which they may deem themselves entitled either in law or equity; but no action for the recovery or possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her, or its assigns, unless such action shall be commenced within two years after such deed shall have been filed for record in the office of the county clerk of the county where such lands are situate. Nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the passage of this code.

History: En. Sec. 5070, Pol. C. 1895;
re-en. Sec. 3503, Rev. C. 1907; re-en. Sec.
5320, R. C. M. 1921.

11-2912. (5321) Mining claims. Whenever mining claims have been located prior to the passage of this code, and where the same are prior in location to the claim of any occupant for other purposes, such mining rights, according to the metes and bounds so located and claimed, are not in any manner affected by the provisions of this chapter; nor must any sale be made nor any title be conveyed by reason of any sale of such lands so claimed for mining purposes, until after the occupancy of such mining claims shall have been abandoned by the holders thereof.

History: En. Sec. 5071, Pol. C. 1895;
re-en. Sec. 3504, Rev. C. 1907; re-en. Sec.
5321, R. C. M. 1921.

11-2913. (5322) Settlement of adverse claims. In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the

council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed in accordance with the facts; but in all other cases of adverse claim the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the city or town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment. In case no such action be commenced within the time herein prescribed, the council must deliver a deed to the party in possession, as provided in this chapter.

History: En. Sec. 5072, Pol. C. 1895;
re-cn. Sec. 3505, Rev. C. 1907; re-cn. Sec.
5322, R. C. M. 1921.

11-2914. (5323) Notice of filing plat. The said council must give public notice by advertising for four weeks in any newspaper published in said city or town, and if there be no newspaper published in said city or town, then by publication in some newspaper having the most general circulation in such city or town, and not less than five written or printed notices must be posted within the limits of such city or townsite; such notice must state that the plat thereof has been filed in the clerk's office. If any person, company, association, or any other claimant of lands in such city or town, fails, neglects, or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this article, within six months after the filing of said plat, the clerk must enter on his book the names of all such persons, with a description of the property or premises, and certify the same as delinquent for the amount of assessment certified to by such clerk as due, under this article; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the said council must advertise all such lots and parcels of land for sale, in the same manner as real estate is required to be advertised under execution.

History: En. Sec. 5073, Pol. C. 1895;
re-cn. Sec. 3506, Rev. C. 1907; re-cn. Sec.
5323, R. C. M. 1921.

11-2915. (5324) Sale of delinquent lands. At the time of the sale mentioned in the advertisement, the marshal of the city or town must sell all such parcels of land so remaining delinquent at public auction to the highest bidder for cash, at some public place within the limits of the city or townsite; and he must give the purchaser at such sale a certificate of his purchase, setting forth therein the description of the premises sold, the amount paid, and that the same is subject to redemption, as prescribed in the net section; but no sale must be made for less than the whole amount

of assessments and the costs of making the sale, which costs shall be divided pro rata among the several parcels offered for sale.

History: En. Sec. 5074, Pol. C. 1895;
re-en. Sec. 3507, Rev. C. 1907; re-en. Sec.
5324, R. C. M. 1921.

11-2916. (5325) Redemption. At any time within six months after such sale, the original claimant is entitled to redeem such premises by paying to the purchaser, or the clerk of the council for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs or assigns, is entitled to demand and receive from the council a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs or assigns, to writ of assistance from the district court having jurisdiction of the premises.

History: En. Sec. 5075, Pol. C. 1895;
re-en. Sec. 3508, Rev. C. 1907; re-en. Sec.
5325, R. C. M. 1921.

11-2917. (5326) Unclaimed lands. If there be any unoccupied or vacant unclaimed lands within the limits of such city or townsite, the council must cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, schoolhouse lots, parks, and levees, and cause all necessary roads, streets, lanes, and alleys to be laid out through the same and dedicated to public use; and the council may sell the same in suitable parcels to possessors of adjoining lands or to other persons of said town at a price not less than five dollars per acre or fraction of an acre; and in case two or more claimants apply for the same tract, or parcel of the same tract, they must sell the same by auction to the highest bidder. If any such lands remain unsold at the end of six months after the filing of the town plat, the council has power to sell such vacant lands at public or private sale in such manner and on such terms as they may deem advisable for the best interests of the town, and shall give deeds therefor to the several purchasers.

History: En. Sec. 5076, Pol. C. 1895;
re-en. Sec. 3509, Rev. C. 1907; re-en. Sec.
5326, R. C. M. 1921.

11-2918. (5327) School lots. All school lots and parcels of land reserved for school purposes must be conveyed to the school trustees of the school district in which such city or town is situate, without cost or charge of any kind whatever.

History: En. Sec. 5077, Pol. C. 1895;
re-en. Sec. 3510, Rev. C. 1907; re-en. Sec.
5327, R. C. M. 1921.

11-2919. (5328) Payment of expenses—disposition of surplus moneys. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter are a charge upon the city or town treasury of each particular city or town ordering the work to be done, to be paid out of the treasury, upon the order of the council; and all moneys

paid for lands or to defray the expenses of carrying into effect the provisions of this chapter shall be paid into the city or town treasury by the officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be paid into the general fund.

History: En. Sec. 5078, Pol. C. 1895;
re-en. Sec. 3511, Rev. C. 1907; re-en. Sec.
5328, R. C. M. 1921.

11-2920. (5329) Informality not to invalidate. No mere informality, failure, or omission on the part of any of the persons or officers named in this chapter invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this chapter is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed.

History: En. Sec. 5079, Pol. C. 1895;
re-en. Sec. 3512, Rev. C. 1907; re-en. Sec.
5329, R. C. M. 1921.

11-2921. (5330) City or townsite on school lands. When the lands of such city or town are on a school section or subdivision thereof, and are owned by the state, the council may procure title and purchase the same from the state and dispose of the same in the manner provided in this chapter for the disposing of lands purchased from the United States.

History: En. Sec. 5080, Pol. C. 1895;
re-en. Sec. 3513, Rev. C. 1907; re-en. Sec.
5330, R. C. M. 1921.

The counties of Montana are those that existed on the date of ratification of the new constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

1972 Montana Constitution, XI,2.

A "local government unit" includes but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

1972 Montana Constitution, XI,1.

A "first class city" is a city having a population of 10,000 or more. (11-201)

A "second class city" is a city having a population of more than 5,000 and less than 10,000. (11-201)

A "third class city" is a city having a population of more than 1,000 but less than 5,000. (11-201)

A "town" is a municipal corporation that has a population of 300 or more and less than 1,000. (11-201)

1973 SUPPLEMENT

CHAPTER 50—ALTERNATIVE FORMS OF COUNTY GOVERNMENT

Section

- 16-5001. Alternative forms of county government authorized.
- 16-5002. Optional forms.
- 16-5003. Initiation by county commissioners—petition—resolution—election date—notice.
- 16-5004. Adoption of optional form—when effective—disapproval.
- 16-5005. Discontinuance.
- 16-5006. Adoption of optional form not to affect present acts—transfer of powers.
- 16-5007. Optional form to elect county commissioners at large or by districts—number of members.
- 16-5008. Election of board at large—procedure for change in number of members—terms of office.
- 16-5009. Election of board by districts.
- 16-5010. Rules of board—meetings and records to be public—majority vote required.
- 16-5011. Organization of board.
- 16-5012. Powers vested in board of county commissioners.
- 16-5013. Specific powers and duties of the board.
- 16-5014. Elected county official form.
- 16-5015. County commissioner form.
- 16-5016. Manager form.
- 16-5017. Elected county executive.
- 16-5018. Performance of duties in absence of county executive or manager.
- 16-5019. Compensation established by county board -- manager -- executive.

16-5001. Alternative forms of county government authorized. The electors of any county may adopt an alternative form of county government authorized by the provisions of this act. Upon adoption as provided by such act, said alternative form of government shall take the place of the form of government then existing in such county, and the sections of this act, applicable to the adopted alternative form of government, shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only insofar as they are not inconsistent with the aforesaid provisions.

History: En. Sec. 2, Ch. 123, L. 1973.

Title of Act

An act to implement article XI, section 3, of the 1972 Montana constitution by providing for optional forms of county government; procedures to adopt and initiate an optional form of county govern-

ment; adding county attorney and clerk of district court to the list of offices that may be consolidated; deleting the non-succession provision for county treasurer; amending sections 16-901, 16-2406 and 16-2412, R. C. M. 1947; and repealing sections 16-2403, 16-2407 and 16-3901 through 16-3923, R. C. M. 1947.

16-5002. Optional forms. An optional form of county government shall include the elected county official form, the county commissioner form, the manager form and the elected county executive form.

History: En. Sec. 3, Ch. 123, L. 1973.

16-5003. Initiation by county commissioners — petition — resolution — election date — notice. The board of county commissioners of any county may, by a two-thirds ($\frac{2}{3}$) vote of the board, or shall, within thirty (30) days upon receipt of a petition signed by fifteen per cent (15%) of the electors of the county as determined by the number of votes cast therein for the office of governor at the last preceding gubernatorial election, by resolution submit in a referendum to the electors of the county the question of adopting a new form of county government authorized by this act. If more than one optional form of county government is presented to the county commissioners by petition a primary election shall be held to determine the form to be submitted to the electors in a referendum. It shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special election is called it shall be held not more than ninety (90) days nor less than sixty (60) days from the passage of the resolution, but not within thirty (30) days of any general election.

(1) The question submitted shall be worded: "Shall the county of adopt the form of county government known as the form." (name of form)

(2) It shall be the duty of the board of county commissioners to publish a notice of the referendum in a daily paper twice a week for a period of three (3) consecutive weeks, or in case there is no daily paper of wide circulation in the county, then in a weekly paper for four (4) consecutive weeks.

History: En. Sec. 4, Ch. 123, L. 1973.

16-5004. Adoption of optional form—when effective—disapproval. If a majority of the votes cast on the question of adopting an optional form

of county government is in the affirmative, it shall go into effect at a date designated in the petition or resolution; provided, that no elected official then in office, whose position will no longer be filled by popular election, shall be retired prior to the expiration of his term of office, but from and after the establishment of the optional form of county government, his duties shall be such duties as are assigned to him by the person or body administering the optional form of government. If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next two (2) years following the date of disapproval.

History: En. Sec. 5, Ch. 123, L. 1973.

16-5005. Discontinuance. A proposition to discontinue an optional form of county government established under this act or to adopt another optional form of county government pursuant to this act may be submitted to the electors of the county at any general election in the manner provided for the submission of an optional form of county government under section 4 [16-5003] of this act.

History: En. Sec. 6, Ch. 123, L. 1973.

16-5006. Adoption of optional form not to affect present acts—transfer of powers. The adoption or discontinuance of an optional form of county government in any county as provided in this act shall not affect any act done, ratified, or affirmed, or any contract or other right or obligation other than contracts for personal services, accrued or established, or any action, prosecution, or proceeding, civil or criminal, pending at the time such change in form of government takes effect; nor shall the adoption or discontinuance of such form of county government affect such causes of action, prosecutions, or proceedings existing at the time it takes effect; but such rights shall attach to, and actions, prosecutions, or proceedings may be prosecuted and continued, or instituted and prosecuted against, by, or before the department having jurisdiction or power of the subject matter to which such action, prosecution, or proceedings pertains. All rules, regulations, and orders lawfully promulgated prior to such adoption shall continue in force and effect until amended or rescinded in accordance with the sections of this act.

On the effective date of the adoption or discontinuance of an optional form of county government causing a transfer of rights, duties, and powers from one department or office to another, all books, records, papers, documents, property, real and personal, funds, appropriations and balances of appropriations, and pending business in any way pertaining to such rights, powers, and duties shall be similarly transferred.

History: En. Sec. 7, Ch. 123, L. 1973.

16-5007. Optional form to elect county commissioners at large or by districts—number of members. (1) Any optional form of county government shall include a board of county commissioners, elected either at large as provided in section 9 [16-5008] of this act, or by districts as provided in section 10 [16-5009] of this act. The method of election shall be determined

by inclusion of the method in the optional form adopted pursuant to section 3 [16-5002] of this act.

(2) The board of county commissioners shall consist of such number of members as shall be determined by inclusion of either three (3) or five (5) members in the optional form adopted pursuant to section 3 [16-5002] of this act.

History: En. Sec. 8, Ch. 123, L. 1973.

16-5008. Election of board at large—procedure for change in number of members—terms of office. (1) Under all optional forms of county government whereby the entire board of county commissioners is elected at large there shall be a board of county commissioners who shall have the qualifications and shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) If the electors of a county approve a proposition to adopt an optional form of county government under this act and thereby adopt a different size of the board of county commissioners, the change in membership shall be effected as follows:

(a) Whenever the number of members of the board is increased, there shall be elected at the regular state election next following the adoption of such provision, a sufficient number of county commissioners to bring the total membership of the board up to the number fixed. County commissioners shall first serve a term of six (6) years, except the candidates first elected under the provisions of this section.

(b) Whenever the number of members of the board is decreased, the optional number of county commissioners adopted under this act shall be effective as to the commissioner with the least time left on his term on the first Monday in January following the next regular state election and as to the other half of the decrease on the first Monday in January two (2) years later. The latter decrease in board size shall also be determined by the least time left on his term. Should two (2) commissioners have the same amount of term left to serve, then by lot.

(3) The term of office of county commissioners shall be six (6) years except as provided in this subsection. If the optional form as adopted provides for no change in size of the board of county commissioners, county commissioners shall continue to be elected for six (6) year terms. If the optional form as adopted provides for an increased membership on the board of county commissioners as provided in this act, the additional members shall be elected to the board at the first regular state election subsequent to the adoption of the alternative form.

(4) If the first election under an optional form of county government provided for in this act occurs in a year in which one county commissioner is to be elected under the former law and the optional form as adopted provides for an expansion of the board to five (5) commissioners, there shall be elected for a staggered term, two (2) commissioners for a six (6) year term and one (1) commissioner for a four (4) year term, as provided in this act.

(5) At all succeeding elections, after the first regular state election subsequent to adoption of an optional form, all members of the board of county commissioners shall continue to be elected for six (6) year terms.

History: En. Sec. 9, Ch. 123, L. 1973.

16-5009. Election of board by districts. (1) Under all optional forms of county government whereby any members of the board of county commissioners are elected by districts there shall be a board of county commissioners who shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) The board shall consist of such number of members as provided in the proposition for the optional form that has been adopted.

(3) The division of the county into districts for county commissioners shall conform to the constitutional standards for division of the state into districts for election of members of the legislature. If the proposition for the optional form adopted provides that the county commissioners shall be elected by districts, the board of county commissioners shall, commencing in the first election under an optional form of county government, divide the county into county commissioner districts using the most recent decennial federal census. The districts shall be reapportioned as soon as possible after each decennial federal census becomes available.

History: En. Sec. 10, Ch. 123, L. 1973.

16-5010. Rules of board—meetings and records to be public—majority vote required. The board of county commissioners shall determine its own rules and order of business and cause a record of its proceedings to be kept. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge. No action of the board shall be valid or binding unless adopted by the affirmative vote of a majority of the members elected to the board.

History: En. Sec. 11, Ch. 123, L. 1973.

16-5011. Organization of board. The board of county commissioners shall organize on the first Monday of each year, except when the first Monday of the year falls on a holiday then the board shall organize on the first Tuesday of each year, by the election of one of its members as chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 12, Ch. 123, L. 1973.

16-5012. Powers vested in board of county commissioners. The powers of a county as a body politic and corporate shall be vested in a board of county commissioners and exercised in the manner provided in this act.

History: En. Sec. 13, Ch. 123, L. 1973.

16-5013. Specific powers and duties of the board. The board of county commissioners shall:

(1) be the policy-determining body of the county, and except as otherwise provided by law, shall be vested with all the powers of the county, including power to levy taxes and to appropriate funds;

(2) have the power to create, organize, alter, consolidate or abolish administrative units and transfer and assign their functions, powers and duties;

(3) have all powers and duties vested in or imposed upon it by the general law, except as otherwise provided for in this act;

(4) provide for the borrowing of money in anticipation of the collection of taxes and revenues for the current fiscal year;

(5) acquire, construct, maintain, administer, rent, and lease property including buildings and other public improvements as provided by law;

(6) co-operate or join by contract pursuant to this act any city, county, state or political subdivision or agency thereof, or with the United States or any agency thereof, for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service; and may provide the terms upon which the county shall perform any of the services and functions of any municipality or political subdivision in the county;

(7) accept, in the name of the county, gifts, devises, bequests, and grants-in-aid from any person, firm, corporation, city, county, state, or political subdivision or agency thereof, or from the United States or any agency thereof;

(8) request periodic or special reports by the county executive, county manager, elected officers, and administrative officers and bodies, and may require their attendance upon its meetings;

(9) designate the maximum number of assistants, deputies, clerks, and other persons that may be employed in each of the offices and departments of the county;

(10) authorize the county executive or manager to employ experts and consultants in connection with the administration of the affairs of the county;

(11) establish procedures governing the making of county contracts and the purchasing of county supplies and equipment by competitive bidding;

(12) exercise control over expenditures by all county officials and promulgate and execute an allotment schedule allocating annual appropriation for any county government purpose by item on either a monthly or quarterly basis;

(13) by ordinance or resolution make any rule, or act in any manner provided by general law.

History: En. Sec. 14, Ch. 123, L. 1973.

16-5014. Elected county official form. (1) Elected county official form defined. The elected county official form of county government shall be

that form in which the government is administered by a board of county commissioners and the following subordinate officials may be elected; a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a county auditor, a coroner, and a public administrator.

(2) Modification of regular forms. There may be modification of the elected county official form adopted as hereinafter provided. The number of elected officials may vary by the right of the commissioners to consolidate or combine any two (2) or more offices to co-operate with other units of local government in the sharing of any official.

(3) All the general laws of the state of Montana concerning this form of county government shall apply to the elected county official form of county government, except as provided for in this act.

History: En. Sec. 15, Ch. 123, L. 1973.

16-5015. County commissioner form. County commissioner form defined. The county commissioner form of county government shall be that form in which the government is administered by a board of county commissioners. The county commissioners may appoint those county officials as may be necessary for county operations and establish an adequate compensation plan for the duties required of each official. Those officials shall be appointed with regard to merit only and need not be a resident of the county prior to the time of their appointment. Under this form of county government the board of county commissioners shall have the power to create, organize, alter, consolidate or abolish administrative units of county government and transfer and assign their functions, powers and duties.

History: En. Sec. 18, Ch. 123, L. 1973.

16-5016. Manager form. (1) Manager appointed or designated. The board of county commissioners may appoint a county manager who shall be the administrative head of the county government which the board has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a full-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation of all the duties of his office. The term "manager" herein used shall apply to such chairman, officer or agent in the performance of such duties.

(2) Duties of the manager. It shall be the duty of the county manager:

(a) to see that all orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of

the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

History: En. Sec. 19, Ch. 123, L. 1973.

16-5017. Elected county executive. (1) Elected county executive form defined. The elected county executive form of government shall be that form in which the government is administered by a single county official, elected at large by the qualified voters of the county. The elected county executive shall be elected in the same manner as the other county officials. The board of county commissioners shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the board of county commissioners. Compensation for the elected county executive shall be established by the board, commensurate with and comparable to the compensation for a like service in commercial business.

(2) Duties of the elected county executive. It shall be the duty of the elected county executive:

(a) to see that all the orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

(3) Specific powers of the elected county executive. The powers of the elected county executive shall include the power to veto any ordinance or resolution adopted by the board of county commissioners. A veto by the county executive may apply to all or any items of an ordinance appropriating money. Certification of a veto must be made by the county executive within ten (10) days of its adoption by the board of county commissioners, and the board of county commissioners may override the veto by a two-thirds (2/3) vote of all its members. Under the elected executive plan an ordinance or resolution shall become effective upon approval by the county executive, expiration of such ten (10) days without approval or veto, or the overruling of a veto.

History: En. Sec. 20, Ch. 123, L. 1973.

16-5018. Performance of duties in absence of county executive or manager. In case of absence or disability of the county executive or manager as determined by the board of county commissioners, his duties shall be performed during his absence or disability by whomsoever the board of county commissioners designates by resolution.

History: En. Sec. 21, Ch. 123, L. 1973.

16-5019. Compensation established by county board—manager—executive. (1) The board of county commissioners shall establish a schedule of compensation for officers and employees which shall provide uniform compensation for like service, and such compensation shall be commensurate with and comparable to the compensation for a like service in commercial business. The schedule of compensation may establish a minimum and maximum for any class, and an increase in compensation, with the limits provided for by any class, may be granted at any time by the county manager, county executive or other appointing authority upon the basis of efficiency and seniority records. None of the provisions of the law of this state with regard to the appointment or compensation of deputy county officers shall apply hereto.

(2) In the manager plan, the compensation of the county manager shall be fixed by the board of county commissioners.

(3) In the elected county executive plan, the compensation of the county executive shall be fixed by the board of county commissioners one (1) year prior to the county executive's term of office. In the first year, after adopting the county executive form of county government, the compensation for the county executive shall be one hundred fifty per cent (150%) of that amount established for a member of the board of county commissioners in that county, figured on the basis of the commissioners working full time.

History: En. Sec. 22, Ch. 123, L. 1973.

Repealing Clause

Section 23 of Ch. 123, Laws 1973 read

"Sections 16-2403, 16-2407 and 16-3901 through 16-3923, R. C. M. 1947, are repealed."

CHAPTER 8

GENERAL POWERS AND LIMITATIONS UPON COUNTIES

- Section 16-801. Every county a body corporate.
16-802. Powers, how exercised.
16-803. Name and designation.
16-804. Enumeration of powers.
16-805. Restriction on loaning credit.
16-806. Restriction on temporary loans.
16-807. Limit of indebtedness.
16-808. Counties indebted beyond constitutional limit may operate on cash basis.
16-809. Superseded.
16-810. Inhabitants of county, competency as jurors when county party.
16-811. No execution to issue.
16-812. Money illegally paid recovered.

16-801. (4441) Every county a body corporate. Every county is a body politic and corporate, and as such has the power specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed.

History: En. Sec. 4190, Pol. C. 1895; re-en. Sec. 2870, Rev. C. 1907; re-en. Sec. 4441, R. C. M. 1921. Cal. Pol. C. Sec. 4000.

Distinguished from Municipal Corporation

While, in a strict sense, a county is not a municipal corporation, yet, in the sense that it is a body corporate with such powers only as are expressly conferred by the code and special statutes, and such as are necessarily implied from those expressed, it comes within the rules and principles applicable to such corporations. *State ex rel. Lambert v. Cond.* 23 M 131, 137, 57 P 1092; *Morse v. Granite County*, 41 M 73, 83, 119 P 286.

A county is a body corporate, but does not possess the powers of local legislation and control which are the distinguishing characteristics of a municipal corporation. *Hersey v. Neilson*, 47 M 132, 141, 131 P 30.

Ejectment against County

While an action for unlawful detainer in which treble damages are sought does not lie against a county, one in ejectment may be maintained against it. *Sul-*

livan v. Big Horn County, 66 M 45, 47, 212 P 1105.

Penal Liability

A municipal corporation, such as a county, being no more than a political subdivision of the state for governmental purposes, cannot be subject to a penal liability, and therefore an action for treble (or penal) damages for unlawful detainer does not lie. *Sullivan v. Big Horn County*, 66 M 45, 47, 212 P 1105.

Political Subdivision

A county is one of the civil divisions of the state for political and judicial purposes, created by the sovereign power of the state of its own will, without the consent of the people who inhabit it. It is quasi-corporate in character, but has only such powers as are expressly provided by law or are necessarily implied by those expressed. *State ex rel. Lambert v. Cond.* 23 M 131, 137, 57 P 1092; *Independent Publishing Co. v. County of Lewis and Clark*, 30 M 43, 86, 75 P 860; *Yellowstone County v. First Trust & Savings Bank*, 46 M 439, 450, 124 P 596; *Hersey v. Neilson*, 47 M 132, 143, 131 P 30; *Edwards*

CHAPTER 9

COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS—COMPENSATION

- Section 16-901. Board, how composed.
16-902. Member must be elector of county.
16-903. Vacancy, how filled.
16-904. Repealed.
16-905. Chairman of board—administration of oaths.
16-906. Meetings and records to be public.
16-907. Clerk.
16-908. Duties of clerk.
16-909. Duties of board.
16-910. Regular meetings—extra sessions.
16-911. Other meetings.
16-912. Compensation of members of board.
16-913. Employment of personnel by the board of county commissioners.

16-901. (4452) Board, how composed. Each county may have a board of county commissioners, consisting of three members, whose term of office is six years.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1933; amd. Sec. 1, Ch. 123, L. 1973. Cal. Pol. C. Sec. 4022.

1973 SUPPLEMENT
Amendments
The 1973 amendment substituted "may" for "must" before "have a board of county commissioners."

16-902. Repealed—Chapter 203, § 5, Laws of 1974.

16-902.1. Commissioners shall district. The board of county commissioners shall in every county of the state, following each federal decennial census, divide their respective counties into three (3) commissioner districts as compact and equal in population and area as possible. The district judge or judges of the said county shall review the action of the commissioners

to determine whether or not such action meets the requirements of this section. Such apportionment may take place at any time for the purpose of equalizing in population and area such commissioner districts, however, no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected, and provided further, that no change in the boundaries of any commissioner district shall be made within six (6) months next preceding a general election.

History: En. 16-902.1 by Sec. 1, Ch. 293, L. 1974.

Note. Section 6 of Ch. 293, Laws of 1974 provides: "The division of the counties into three (3) commissioner districts as provided for in section 1 [16-902.1] of this act shall not be accomplished until subsequent to January 1, 1975. The boundaries of existing commissioner districts shall be continued for the purposes of elections to be held in the year 1974."

16-902.2. Filing of districts. When such division of commissioner districts has been made, there shall be filed in the office of the county clerk and recorder of such county, a certificate designating the metes and bounds of the boundary lines and limits of each said commissioner district. The certificate shall be dated and signed by the district court judge or judges of the county.

History: En. 16-902.2 by Sec. 2, Ch. 293, L. 1974.

16-902.3. Elections. At each general election, the member or members of the board of county commissioners to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board who has not resided in said district for at least two (2) years next preceding the time when he shall become a candidate for said office.

History: En. 16-902.3 by Sec. 3, Ch. 293, L. 1974.

16-902.4. Refund of fee. Any candidate filing for the office of county commissioner prior to the effective date of this act that does not comply with the provisions of this act shall receive a refund of their filing fee.

History: En. 16-902.4 by Sec. 4, Ch. 293, L. 1974.

16-902.5. Not applicable to counties with alternative forms of government. This act shall not apply to counties adopting an optional or alternative form of government authorized by law.

History: En. 16-902.5 by Sec. 7, Ch. 293, L. 1974.

16-903. (4454) Vacancy, how filled. Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy, and such appointee shall hold office until the next general election.

History: En. Sec. 4212, Pol. C. 1895; re-en. Sec. 2883, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1913; amd. Sec. 1, Ch. 23, L. 1921; re-en. Sec. 4154, R. C. M. 1921. Cal. Pol. C. Sec. 4026.

Cross-Reference

Filling of vacancies if judge not available after enemy attack, sec. 82-3503.

Annulment of Order Filling Vacancy

The power to fill a vacancy in the office of county commissioner is conferred by the constitution upon the district judge of the district in which the vacancy occurs and the provisions of this section, enacted in pursuance thereof, but such

power is ministerial, not judicial, in character. Certiorari does not lie to annul an order filling a vacancy deemed by the judge to exist in that office in a newly created county because of the alleged unconstitutionality of the act under which the office was filled by election, and because the incumbent was holding two other offices regarded by him as incompatible. *State ex rel. Bowen v. District Court*, 50 M 249, 251, 252, 146 P 467.

Prospective Appointment To Fill Vacancy

Under section 59-602, refusal or neglect of an officer elect to file his bond within

16-904. (4455) Repealed—Chapter 68, Laws of 1967.

Repeal

This section (Sec. 917, 5th Div. Comp. Stat. 1887; Sec. 1, Ch. 30, L. 1947), re-

lating to the bond of county commissioners, was repealed by Sec. 10, Ch. 68, Laws 1967.

16-905. (4456) Chairman of board—administration of oaths. The board of county commissioners must elect one of its members chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R. C. M. 1921. Cal. Pol. C. Sec. 4028.

Collateral References

Counties—51.
20 C.J.S. Counties § 80.

16-906. (4458) Meetings and records to be public. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R. C. M. 1921. Cal. Pol. C. Sec. 4035.

water County, 28 M 360, 364, 365, 72 P 755; *Burr v. Winnett Times Publishing Co.*, 80 M 70, 79, 258 P 212.

References

Williams v. Board of Commrs. of Broad-

Collateral References

Counties—52, 53.
20 C.J.S. Counties §§ 88, 91.

16-907. (4459) Clerk. The county clerk is the clerk of the board of county commissioners. The records must be signed by the chairman and the clerk.

History: En. Sec. 4217, Pol. C. 1895; re-en. Sec. 2888, Rev. C. 1907; re-en. Sec. 4459, R. C. M. 1921. Cal. Pol. C. Sec. 4029.

Collateral References

Counties—89.
20 C.J.S. Counties §§ 91, 141.

16-908. (4460) Duties of clerk. The clerk of the board must:

1. Record all the proceedings of the board.
2. Make full entries of all its resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county.
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present.
4. Sign all orders made and warrants issued by order of the board for the payment of money, and certify the same to the county treasurer.
5. Record the reports of the county treasurer of the receipts and disbursements of the county.

6. Preserve and file all accounts acted upon by the board.
7. Preserve and file all petitions and applications for franchises, and record the action of the board thereon.
8. Record all orders levying taxes.
9. Designate upon every account allowed by the board the amount allowed, and he must deliver to any person who may demand it a certified copy of any record in his office, or any account on file therein.
10. As often as a new township is organized, or the boundaries of any township are altered, to immediately make out and transmit to the secretary of state a certified statement of the names and boundaries, and the boundaries of any township altered.
11. Perform all other duties required by law or any rule or order of the board.

History: En. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Secs. 365, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4160, R. C. M. 1921. Cal. Pol. C. Sec. 4030.

May Not Question Constitutionality of Statute

A ministerial officer, such as a county clerk, to whom no injury can result and to whom no violation of duty can be imputed by reason of his compliance with a statute cannot refuse to perform a duty imposed by it on the ground of its unconstitutionality, since such an officer is not liable for his official acts when acting under process, warrants or other instruments, fair upon their face and issued

from a superior tribunal or board. *State ex rel. Lockwood v. Tyler*, 64 M 124, 131, 208 P 1081.

Right To Question Legality of Claims against County

The duty of the county clerk to issue warrants for claims passed upon by the board of county commissioners is ministerial only, and he is not clothed with supervisory power to either question or determine the legality of the claims, except where they are void upon their face as without the jurisdiction of the board to pass upon. *State ex rel. Lockwood v. Tyler*, 64 M 124, 131, 208 P 1081.

Collateral References

Counties \Rightarrow 74 (2), 82;
20 C.J.S. Counties §§ 133, 141.

16-909. (4461) Duties of board. The board of county commissioners must cause to be kept:

1. A "Minute Book," in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.
2. A "Road Book," containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts, or relating to road supervisors and their reports and accounts, as provided in section 2604 (Pol. Code 1895, since repealed) of this code.
3. A "Franchise Book," containing all franchises granted by them, for what purpose, the length of time, and to whom granted, the amount of bond and license tax required.
4. A "Warrant Book," in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

History: En. Sec. 4219, Pol. C. 1895; re-en. Sec. 2890, Rev. C. 1907; re-en. Sec. 4161, R. C. M. 1921. Cal. Pol. C. Sec. 4031.

Construction of Section

This section providing that a board of county commissioners must cause a minute book to be kept in which must be

16-910. (4462) Regular meetings—extra sessions. The board of county commissioners, except as may be otherwise required of them, may meet at the county seat of their respective counties on the first and third Mondays of each and every month of the year for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days. But the board may at any time, by giving at least two days' posted public notice, hold an extra session of not over two days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third and fourth classes.

History: Ap. p. Sec. 390, 5th Div. Rev. Stat. 1878; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2691, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1929; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 5, Ch. 391, L. 1973. Cal. Pol. C. Sec. 4032.

16-911. (4463) Other meetings. Such other meetings must be held to canvass election returns, equalize taxation, and other purposes as are prescribed in this code or provided by the board.

History: En. Sec. 4221, Pol. C. 1895; re-en. Sec. 2392, Rev. C. 1907; re-en. Sec. 4463, R. C. M. 1921. Cal. Pol. C. Sec. 4033.

Amendments

The 1973 amendment deleted "except when meeting as the county board of equalization as provided for by law" fol-

lowing "each and every month of the year" in the first sentence in order to implement article VIII, section 7 of the 1972 Constitution.

16-912. (4464) Compensation of members of board. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary to be established by resolution of the board of county commissioners in an amount not to exceed the annual salary established in the schedule in section 25-605, R.C.M. 1947, for the clerk and recorder.

In addition, each member of the board of county commissioners in counties of the first, second, third and fourth class shall receive twelve cents (\$.12) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties.

(2) Each member of the board of county commissioners in all other counties is entitled to a salary to be established by the board of county commissioners by resolution in an amount not to exceed thirty-five dollars (\$35) per day for each day's attendance on the sessions of the board and twelve cents (\$.12) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, each day that such trip is actually made, provided, however, that any county commissioner whose place of residence is fifty (50) miles or more from the county seat, as measured by the usual route of travel, may elect to receive mileage as provided in this section or, in lieu of mileage, a sum of ten dollars (\$10) per day for each day's attendance on sessions of the board as expenses, while engaged in the performance of his official duties, and no other compensation must be allowed.

History: En. Sec. 317, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 1212, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973.

Amendments

The 1969 amendment raised the annual salaries in subsection (1) from \$6,500 to \$8,000, \$6,300 to \$7,500, \$6,100 to \$7,300 and \$6,000 to \$7,100; in subsection (2), raised the per diem compensation from \$25 to \$30 and inserted a \$4,000 per year maximum.

The 1973 amendment substituted the final clause of the first paragraph of subsection (1), beginning with "to be established" for the schedule formerly provided in that subsection; increased the mileage allowance from nine cents to 12 cents in the second paragraph of subsection (1) and in the middle of subsection (2); substituted "a salary to be established by the board of county commissioners by resolution in an amount not to exceed thirty-five dollars (\$35)" for "thirty dollars (\$30)" near the beginning of subsection (2); deleted "but not to exceed four thousand dollars (\$4,000) per year" following "sessions of the board" near the beginning of subsection (2); and deleted subsection (3), which prohibited salary increases during the term of a county commissioner.

16-913. Employment of personnel by the board of county commissioners.
The board of county commissioners may employ such persons as it deems

necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary and responsibilities of such persons.

History: En. Sec. 1, Ch. 309, L. 1973.

Title of Act

An act permitting the board of county

commissioners to hire administrative assistants and set their duties and salary; and amending section 16-2409, R. C. M. 1947.

CHAPTER 10

GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

- Section 16-1001. Powers of supervision—indemnity insurance premiums.
16-1002. Division of county into townships, school, road and other districts—parking regulations.
16-1003. Elections, powers concerning.
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16-1004.1. Repealed.
16-1005. Cities may use county road equipment—when.
16-1006. Rooms for county purposes.
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1973 SUPPLEMENT 16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary.

16-1008. Superseded.

16-1008A. Erection and management of county buildings and other improvements.

16-1008B. Establishment of joint county youth guidance centers.

16-1009. Sale of property.

1973 SUPPLEMENT 16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent.

16-1010. Validation of certain sales of property by county commissioners.

16-1011. Validation of sales of property by county.

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16-1013. Examination and allowance of officers' accounts.

16-1014. Accounts to be examined, settled and allowed.

16-1015. Taxation.

16-1016. Equalizing assessments.

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16-1018. Insurance of county buildings.

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16-1020. Fixing of compensation of officers not otherwise provided for.

16-1021. Filling vacancies in county, township and precinct offices.

16-1022. Contract for printing and supplies.

16-1023. Publication of proceedings, list of claims, financial statement.

16-1024. Representing and management of county property and business.

16-1025. Rules and enforcement.

16-1026. Seal of county.

16-1027. Necessary acts.

16-1028. Borrowing money.

16-1029. Bonds for construction may be issued.

16-1030. Lease of county property.

16-1031. Garbage and ash collection—tax—rates in lieu of tax.

16-1032. Lease of county property for hospital purposes.

16-1033. Validation of county sales of real property.

16-1034. County membership in organizations authorized.

16-1035. Validation of county conveyances heretofore made.

16-1036. Lease of county property for boarding home or nursing home for aged persons.

16-1037. County construction and operation of boarding home or nursing home for aged.

16-1038. Services provided at county home.

16-1039. Joint hospitals and nursing homes—definition of terms.

16-1040. Joint institutions authorized.

16-1041. Contract for joint institution.

COUNTIES

CHAPTER 11

SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

- Section 16-1101. Records of water users' associations.
16-1102. New townships, how organized.
16-1103. Sheriff to attend meetings when directed.
16-1104. County commissioners may protect forests.
16-1105. Appropriating money for advertising of county products authorized.
16-1106. Limitations on appropriations—transmittal to department of agriculture, when.
16-1107. Transfer of funds to relief fund authorized, when.
16-1108. County commissioners may establish public scales.
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16-1117. Public ferries and wharves—acquisition of real property—proviso as to incorporated cities and towns.
16-1118. Repealed.
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16-1139. Five per centum of gross sales to be paid to county—county market fund—penalty for refusal to pay.
16-1140. When market shall be open—publication of rules and regulations and notice of market days.
16-1141. Expense of establishing and maintaining public market—how paid.
16-1142. Purchase of products for resale or speculation prohibited.
16-1143 to 16-1148. Repealed.
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CHAPTER 19

COUNTY BUDGET SYSTEM

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16-501

'COUNTIES' 1973 SUPPLEMENT

CHAPTER 5—CREATION OF NEW COUNTIES BY PETITION AND ELECTION;

- Section
- 16-501. Creation of new counties—debts and assets prorated—minimum area and valuation.
- 16-504. Petition for creation of new county—attached affidavits—notice and hearing.
- 16-505. Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.
- 16-506. Measures to be taken after election—officers—effect of adverse vote.
- 16-514. School and road funds.

The counties of Montana are those that existed on the date of ratification of the new constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

1972 Montana Constitution, XI,2.

A "local government unit" includes but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

1972 Montana Constitution, XI,1.

A "first class city" is a city having a population of 10,000 or more. (11-201)

A "second class city" is a city having a population of more than 5,000 and less than 10,000. (11-201)

A "third class city" is a city having a population of more than 1,000 but less than 5,000. (11-201)

A "town" is a municipal corporation that has a population of 300 or more and less than 1,000. (11-201)

CHAPTER 3

CHANGES IN CLASSIFICATION OF CITIES AND TOWNS

- Section 11-301. Proceedings for advancement and census.
11-302. Resolution declaring the advancement.
11-303. New officers—election.
11-304. Old ordinances, etc., remain in force until repealed.
11-305. Cities may be reduced in class—proceedings.
11-306. Disincorporation of city or town—proceeding.
11-307. Duty of county clerk and city or town treasurer—property and money to be turned over.

11-301. (4969) Proceedings for advancement and census. Whenever it manifestly appears to a city or town council from the last federal, state, county, city, or town census, that such city or town has the requisite population to entitle it to be classified as provided in section 11-201 of this code, such city or town must be advanced as provided in the next section.

History: En. Sec. 4959, Pol. C. 1895; Collateral References
amd. Sec. 1, p. 225, L. 1897; re-en. Sec. Census 2, 8, 9; Municipal Corporations
3447, Rev. C. 1907; re-en. Sec. 4969, R. C. 22.
M. 1921. 14 C.J.S. Census § 2; 62 C.J.S. Municipal
Corporations § 36.

11-302. (4970) Resolution declaring the advancement. If it appears by such census that the city or town contains the requisite population to be advanced, the council must thereupon, by resolution, declare that the town is advanced to a city of the first, second, or third class, or a city of the third class is advanced to a city of the second or first class, or a city of the second class is advanced to a city of the first class, as the case may be, and file a certified copy of such resolution in the office of the county clerk of the county and in the office of the secretary of state. Whereupon such town becomes a city of the first, second, or third class, and a city of the third class becomes a city of the second or first class, and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this code relative to cities and towns.

History: En. Sec. 4951, Pol. C. 1895; 3448, Rev. C. 1907; re-en. Sec. 4970, R. C.
amd. Sec. 2, p. 225, L. 1897; re-en. Sec. M. 1921.

11-303. (4971) New officers—election. The first election of officers of the new municipal corporation organized under the provisions of this

chapter must be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

History: En. Sec. 4952, Pol. C. 1895;
re-en. Sec. 3449, Rev. C. 1907; re-en. Sec.
4971, R. C. M. 1921.

11-304. (4972) Old ordinances, etc., remain in force until repealed. All ordinances, bylaws, and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this code relative to cities and towns, remain in force until repealed by the council of the new municipal corporation.

History: En. Sec. 4953, Pol. C. 1895;
re-en. Sec. 3450, Rev. C. 1907; re-en. Sec.
4972, R. C. M. 1921.

11-305. (4973) Cities may be reduced in class—proceedings. Whenever it appears by the census taken by the United States, state, or otherwise, that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by a resolution, declare that such city be reduced to a city of the second class or town, as the case may be. A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this code relative to cities and towns. The provisions of sections 11-303 and 11-304 of this code apply to this section.

History: En. Sec. 4954, Pol. C. 1895;
re-en. Sec. 3151, Rev. C. 1907; re-en. Sec.
4973, R. C. M. 1921.

11-306. (4974) Disincorporation of city or town—proceeding. Whenever it appears by such census that a city or town has a population of less than five hundred (500) inhabitants, the corporate existence of such city or town under this code relative to cities and towns, may be discontinued, upon the filing of a petition requesting that such corporate existence be discontinued, signed by at least two-thirds ($\frac{2}{3}$) of the resident freeholders of said city or town, as certified to by the county clerk and recorder of the county in which said city or town is situated, with the board of county commissioners of said county. Upon the filing of said petition as above provided, with the board of county commissioners, the said board must declare by resolution, that the incorporation thereof be discontinued, and must provide for the payment of the indebtedness of the same, and thereafter annually levy a tax on all the property situated within the limits of such city or town until all of such indebtedness is paid. The books, documents, records, papers and seal of such city or town must be deposited with the county clerk for safekeeping and reference, and the records of the police judge or police court must be deposited with one of the justices of the peace of the township in which such city or town is situated, who has power to execute and complete all unfinished business of such police judge or court.

History: En. Sec. 4955, Pol. C. 1895; re-en. Sec. 3452, Rev. C. 1907; re-en. Sec. 4974, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1931.

Certificate of County Clerk

The county clerk is authorized to certify to the fact that the petition is signed by the required number of resident freeholders. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

While ordinarily the certificate, made by the county clerk under this section, that the petition for disincorporation meets the requirements of the act, is conclusive and the board of county commissioners must make the order of disincorporation, mandamus should not issue to compel it to do so, if fraud or mistake on the part of the clerk be made apparent, the board having the implied power to disallow the petition if, at a hearing, wrongdoing or mistake be proven. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Investigation by County Clerk

In carrying out the command of this section, the county clerk has the implied power of investigating and determining who

are the resident freeholders of the town the disincorporation of which is sought, whether or not the signatures to the petition are genuine, and whether or not the total number of bona fide signers thereof constitute at least two-thirds of the resident freeholders. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Withdrawal of Signatures of Petitioners

Signers of a petition for disincorporation may withdraw therefrom at any time before the county clerk has certified thereto and filed it with the board of county commissioners, unless they signed under misrepresentations of material facts to induce action on their part, in which event, if they act promptly, they may be allowed to withdraw after the date of filing, provided their proof of fraud be clear and convincing. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Collateral References

Municipal Corporations 49-51; Towns 14.

62 C.J.S. Municipal Corporations §§ 101-105; 87 C.J.S. Towns § 17.

11-307. (4975) Duty of county clerk and city or town treasurer — property and money to be turned over. The county clerk must send a certified copy of the resolution of discontinuance to the secretary of state, and all moneys in the hands of the city or town treasurer must be paid to the county treasurer, which must be applied in payment of the indebtedness of such city or town, and all other property must be delivered to the board of county commissioners, which must be sold and disposed of for the purpose of paying such indebtedness.

History: En. Sec. 4956, Pol. C. 1895; re-en. Sec. 3453, Rev. C. 1907; re-en. Sec. 4975, R. C. M. 1921.

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Convention Notes

New provision allowing legislature to grant legislative, administrative and other powers to local government units.

1972 Montana Constitution, XI, 4.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Convention Notes

New provision allowing local government units to share powers with the state

and to have all powers not specifically denied. At present local governments have only those powers specifically granted.

1972 Montana Constitution, XI, 6.

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Convention Notes

New provision allowing local governments to share services and functions

with other units of government, the state and the United States.

1972 Montana Constitution, XI, 7.

11-101. (4955) General powers. A city or town is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this chapter, or in special laws heretofore enacted.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1857; re-en. Sec. 4700, Pol. C. 1895; re-en. Sec. 3202, Rev. C. 1907; re-en. Sec. 4955, R. C. M. 1921. Cal. Pol. C. Sec. 4354.

Construction of Section

This section, taken in connection with section 11-104, and subdivision 1 of section 11-901, constitutes a general grant of power, as well as a limitation of power, for authority is given to the city to pass all ordinances necessary for its government and management, and such ordinances shall not contravene constitutional or statutory provisions. *City of Helena v. Kent*, 32 M 279, 285, 80 P 259.

No consistency whatever has been observed in the legislative use of the term "town." *State ex rel. Powers v. Dale*, 47 M 227, 230, 131 P 670.

The entire municipal code is to be treated as one statute whose provisions are interdependent. *Brown v. Foster*, 48 M 114, 118, 135 P 993.

Doubt as to Power

A city has only such authority as is conferred upon it by express legislative declaration or necessary implication, and where there is a fair and reasonable doubt as to the existence of a particular power, it must be resolved against the municipality and the power denied. *Davenport v. Kleinschmidt*, 6 M 502, 527, 13 P 249; *City of Helena v. Kent*, 32 M 279, 283, 80 P 258; *State ex rel. Quintin v. Edwards*, 40 M 287, 303, 106 P 695; *Helena Light & Ry. Co. v. City of Helena*, 47 M 18, 31, 130 P 416; *Shapard v. City of Missoula*, 49 M 269, 278, 141 P 514; *Sharkey v. City of Butte*, 52 M 16, 19, 155 P 266; *State ex rel. City of Billings v. Billings Gas Co.*, 55 M 102, 108, 173 P 799.

Judicial Notice

In an action against a city to recover damage for injuries to real property, an averment in the complaint that the city "is a municipal corporation, organized and existing under the laws of the state," was sufficient as against the objection that the pleading did not state a cause of action. Judicial notice will be taken of the fact that during a certain year a city was a municipal corporation existing under the laws of this state. *Drew v. City of Butte*, 44 M 124, 125, 119 P 279.

Mode of Exercising Power

When the mode of exercising any power is pointed out in the statute granting it

to a municipal corporation, the mode thus prescribed must be pursued in all substantial particulars. *McGillie v. Corby*, 37 M 249, 254, 95 P 163; *Carlson v. City of Helena*, 39 M 82, 109, 102 P 39; *Shapard v. City of Missoula*, 49 M 269, 278, 141 P 514.

Power Conferred by Grant or Implication

A city has no powers except such as are conferred upon it by legislative grant either directly or by necessary implication. *Davenport v. Kleinschmidt*, 6 M 502, 527, 13 P 249; *City of Helena v. Kent*, 32 M 279, 283, 80 P 259; *Palmer v. City of Helena*, 40 M 498, 507, 107 P 512; *Sharkey v. City of Butte*, 52 M 16, 19, 155 P 266; *Stephens v. City of Great Falls*, 119 M 368, 175 P 2d 408, 410.

Street Improvements

It is the duty of a city organized under the laws of this state to establish and improve streets, and damages can be recovered by one who is injured by its negligence in permitting its streets to become and remain in a dangerous condition. *Sullivan v. City of Helena*, 10 M 124, 141, 25 P 94; *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756; *May v. City of Anaconda*, 26 M 140, 142, 66 P 759; *Ford v. City of Great Falls*, 46 M 292, 306, 127 P 1004.

References

Davis v. Stewart, 54 M 429, 434, 171 P 281; *State ex rel. McLeod v. District Court*, 67 M 164, 168, 215 P 240; *State ex rel. Altop v. City of Billings*, 79 M 25, 33, 255 P 11; *State ex rel. McIntire v. City Council of the City of Libby*, 107 M 216, 219, 82 P 2d 587; *Pollard v. Montana Liquor Control Board*, 114 M 44, 46, 131 P 2d 974.

Collateral References

Municipal Corporations—57; Towns—1.
62 C.J.S. Municipal Corporations § 106; 87 C.J.S. Towns § 1.
37 Am. Jur. Municipal Corporations, p. 720, § 111 et seq.; p. 898, § 276 et seq.

Power of municipal corporation to accept and administer trust. 10 ALR 1368.

Liability of municipal corporation upon implied contract for use of property which it received under an invalid contract. 42 ALR 632.

Power of municipal corporation or authorities to employ detectives. 15 ALR 727.

Municipal power to acquire, maintain

11-102. (4956) Distribution of powers of cities. Every city has legislative, executive, and judicial power. Its legislative power is vested in a city council, its executive power in a mayor and his subordinate officers, and its judicial power in a police court.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4761, Pol. C. 1895; re-en. Sec. 3203, Rev. C. 1907; re-en. Sec. 4956, R. C. M. 1921. Cal. Pol. C. Sec. 4355.

Delegation of Powers

A city cannot, even by express attempt, delegate any powers to others than those who are empowered by statute either as officers or employees to act for the city. Municipalities have only such powers as are expressly granted, and such powers cannot be delegated. A city is, of course, liable for damages arising out of the negligence of its officers and employees for acts done within the scope of their employment, but not otherwise. *Lazich v.*

City of Butte, 116 M 386, 390, 154 P 2d 260.

Transfer to Successors

In the exercise of its legislative powers, a city is ruling its people, and is bound to transmit its powers of government to its successive sets of officers unimpaired. *State ex rel. Great Falls Water Works v. City of Great Falls*, 19 M 518, 534, 49 P 15.

References

State ex rel. O'Hern v. Loud, 92 M 307, 310, 14 P 2d 432.

Collateral References

Municipal Corporations 53, 54, 57.
62 C.J.S. *Municipal Corporations* § 109.

11-103. (4957) Distribution of powers of towns. Every town has legislative, executive, and judicial power. Its legislative power is vested in a town council, its executive power in a mayor and his subordinate officers, and its judicial power in justices of the peace of the township in which the town is situated.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4702, Pol. C. 1895; re-en. Sec. 3204, Rev. C. 1907; re-en. Sec. 4957, R. C. M. 1921.

11-104. (4958) City or town, how-named, general corporate powers. Every city or town organized under this title is entitled "the city of....." (naming it), or "the town of....." (naming it), and by such name has perpetual succession; may sue and be sued in all courts and places, and in all proceedings whatsoever, and may have and use a common seal; may purchase, receive, have, take, hold, lease, use, and enjoy property of every name or description, and dispose of the same for the common benefit; and has such other powers as are incident to municipal corporations not inconsistent with the laws of the United States or the state.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R. C. M. 1921.

Extent of Powers

Municipalities may exercise only powers not in conflict with general law, unless additional power is plainly granted them.

Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 411.

Mandamus to Compel Payment of Bill

Mandamus will lie to compel a city to audit and pay a bill which it owes to a water company for the rent of hydrants, although this section provides that cities may sue or be sued. *State ex rel. Great*

CHAPTER 7

OFFICERS AND ELECTIONS

- Section 11-701. Officers of city of the first class.
 11-702. Officers of city of second and third classes.
 11-703. Officers of towns.
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 11-708. Division of cities and towns into wards.
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 11-727. Compensation of justices of the peace acting as police judge.
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 11-719. Oath and bonds—vacancy.
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 11-725. Salaries and qualifications of mayor and alderman.
 11-727. Compensation of justices of the peace acting as police judge.

CHAPTER 8

EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE
AND ATTORNEY

- Section 11-801. Executive officers.
11-802. Powers of mayor.
11-803. Mayor to preside, sign warrants, etc.
11-804. Council to elect president.
11-805. Duties of clerk.
11-806. Financial statement of city or town—contents—copies, to whom furnished.
11-807. Duties of city treasurer.
11-808. Transfer of municipal funds—how made.
11-809. Cities may close inactive accounts, when.
11-810. Duties of chief of police.
11-811. Qualifications, term of office and duties of city attorney.

1973 SUPPLEMENT

CHAPTER 8—EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—
CHIEF OF POLICE AND ATTORNEY

Section

- 11-802.1. Strong mayor form of government authorized.

POWERS OF CITY AND TOWN COUNCILS

- 11-901. Powers of city councils.
- 11-902. Levy and collection of taxes.
- 11-903. Licenses—requirements.
- 11-904. Issuing licenses.
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- 11-906. Streets, alleys, sidewalks, parks and public grounds.
- 11-907. City council may change street names or numbers.
- 11-908. Plat and filing.
- 11-909. Lighting and cleaning streets—regulation of sidewalks—removal of offensive material from public ways and grounds—tax levy.
- 11-910. Regulation of public ways and grounds—obstructions to be prevented.
- 11-911. Traffic and sales on public ways and grounds.
- 11-912. Speed regulation.
- 11-913. Railroads—regulation of use and speed.
- 11-914. Lighting of railroad tracks—crossings—enforcement of requirements.
- 11-915. Street railroads—authorization and regulation.
- 11-916. Numbering of houses and lots.
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- 11-918. Licensing, taxing and regulation.
- 11-919. Records of pawn, secondhand and junk shops, requirement of.
- 11-920. Regulation of purchases from minors by pawn, secondhand and junk shops.
- 11-921. Regulation of dances.
- 11-922. Suppression of fraud and immoral publications.
- 11-923. Establishment and supervision of markets.
- 11-924. Inspection of foodstuffs.
- 11-925. Weighing, measuring and inspecting.
- 11-926. Regulation of vaults, cisterns, hydrants, pumps, sewers and gutters.
- 11-927. Prevention of and punishment for disturbing the peace.
- 11-928. Limitation of combustible buildings—fire limits.
- 11-929. Fire department—alarm—police telegraph.
- 11-930. Provision for fire equipment.
- 11-931. Inspection and regulation of fire hazards.
- 11-932. Regulation of explosives and inflammable material.
- 11-933. Bonfires—pyrotechnics—toy pistols or guns—regulation by council.
- 11-934. Cruelty to animals.
- 11-935. Abatement of and regulation concerning nuisances.
- 11-936. Vagrants and mendicants.
- 11-937. Jail—maintaining and governing.
- 11-938. Animals running at large.
- 11-939. Licensing of dogs.
- 11-940. Obstructing streets, sidewalks and public grounds to be prevented.
- 11-941. Sidewalks—prevention of animals or vehicles on—prevention of damage to.
- 11-942. Hitching of animals—racing and immoderate driving.
- 11-943. Regulation of coasting, skating, sliding and other amusements.
- 11-944. Location of businesses and factories.
- 11-945. Erection of poles, wires, rods and cables.
- 11-946. Boards of health.
- 11-947. Detention hospitals.
- 11-948. Cemeteries.
- 11-949. Officers' and employees' duties and compensation.
- 11-950. Penalties for violations of ordinances—limitations.
- 11-951. Poll tax—limitation on amount—work for failure to pay.
- 11-952. Partition fence and party wall regulation.
- 11-953. Construction specification—fire escapes.
- 11-954. Use of county jail.
- 11-955. Workhouse—construction authorized—use.
- 11-956. Licensing of vehicles and carriages—rates.
- 11-957. Fire hazardous manufactories—firearms—concealed weapons.
- 11-958. Weights and measures—scale.
- 11-959. Inspection and measuring of building materials.
- 11-960. Arrest of persons.
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1973 SUPPLEMENT
CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

Section

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CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS

11-1023 SUPPLEMENT

Section

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- 11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions.

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CHAPTER 4

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- Section 11-401. Additions to cities or towns.
11-402. Additions, how made.
11-403. Extension of boundaries to include contiguous platted tracts or other parcels of land.
11-404. Land, when deemed contiguous.
11-405. Election on the question of annexation.

11-401. (4976) Additions to cities or towns. Whenever territory adjoining any incorporated city or town is surveyed, and laid off into streets or blocks as an addition thereto, upon filing the map or plat thereof in the office of the county clerk, said territory may become a part of such city or town, upon the approval of the mayor and a majority of the council endorsed thereon.

History: En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R. C. M. 1921.

Approval by Mayor and Council

The approval of the mayor and a majority of the council endorsed on the map or plat of an addition to a city or town is essential to bring the territory included therein within the jurisdiction of the council. *Pool v. Town of Townsend*, 58 M 297, 304, 191 P 355.

Construction of Statute

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities or towns, is clearly shown in this and other sections of the code. *State ex rel. Powers v. Dale*, 47 M 227, 229, 230, 131 P 670.

Sewer Assessments

Where a certain tract of land was not

a part of the city, and the owner was not entitled to the privileges of an owner of city lots, he was under no obligation to pay special assessments for a sewer constructed by the city in the street in front of such land. *Farlin v. Hill*, 27 M 27, 36, 69 P 237. See *Sharkey v. City of Butte*, 52 M 16, 21, 155 P 266.

References

Barnard Realty Co. v. City of Butte, 48 M 102, 113, 136 P 1064; *De Sandro v. Missoula Light & Water Co.*, 48 M 226, 234, 136 P 711.

Collateral References

Municipal Corporations 43.

62 C.J.S. *Municipal Corporations* § 83.

37 Am. Jur. 639, *Municipal Corporations*, §§ 23-34.

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR 2d 1279.

11-402. (4977) Additions, how made. The council has control of all such additions, and power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town, or in the addition thereto, contiguous to or near the proposed addition. The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with, and the plat thereof has been submitted to and approved by the mayor and council, and such approval endorsed thereon.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R. C. M. 1921.

References

Barnard Realty Co. v. City of Butte, 48 M 102, 113, 136 P 1064; *De Sandro v. Missoula Light & Water Co.*, 48 M 226, 234, 136 P 711.

11-403. (4978) Extension of boundaries to include contiguous platted tracts or other parcels of land. (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, or platted for parks, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, and which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of

such city shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty (20) days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, the time when the same shall go into effect to be fixed by such resolution; provided however, that land used for industrial or manufacturing purposes shall not be included in such city under the provisions of this section without the consent in writing of the owners of such land, and further provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders, if any, of the territory proposed to be embraced and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval.

Provided also, that cities of the first class may include as part of such city any platted or unplatted tract or parcel of land that is wholly surrounded by such city upon passing a resolution advertising and upon passing a further resolution or following such advertising, all in the manner aforesaid, and such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders, if any, of the land to be annexed object; provided, however, that land used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery or a place for public or private outdoor entertainment or any purpose incident thereto, shall not be annexed under this provision.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city, or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include

the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and cause to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty (20) days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under subdivision (2) hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1925; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967.

Cross-Reference

Contiguous land owned by government, annexation, secs. 11-511 to 11-513.

Constitutionality

Annexation, in the absence of a constitutional prohibition, is a political matter exclusively for the legislature to control, and, unless specifically restrained by the constitution, the legislature can authorize annexation without the consent, or even against the wishes, of the people living in the annexed corporation or territory. *Harrison v. City of Missoula*, 146 M 420, 407 P 2d 703.

Constitutionality—Class Legislation

There is no objection to class legislation pertaining to this section, since the legislature, in its discretion, by adding "if any" after the words "resident freeholders," clearly bargained the right to protest against annexation upon the valid distinction of residency. *Harrison v. City of Missoula*, 146 M 420, 407 P 2d 703.

Appeal

In taxpayers' suit opposing annexation of a city subdivision where trial court found that less than the required majority had protested, it must be presumed on appeal that the lower court's proceedings are regular and contain no substantial error until otherwise shown preponderantly by the plaintiff. *Kunesh v. City of Great Falls*, 132 M 285, 317 P 2d 297, 298.

Burden of Proof

A first class city has the burden of determining if a majority of the resident freeholders have protested the proposed annexation. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 755.

Construction of Statute

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities and towns, is clearly shown in this and other sections of the code. *State ex rel. Powers v. Dale*, 47 M 227, 229, 230, 131 P 670.

Description of Land Annexed

In annexation proceedings by a second class city the description of the land was adequate, although it omitted township and range, where the resolution stated that the land was contiguous to the bound-

aries of the city and referred to the intersections of streets. *Klamm v. City of Miles City*, 138 M 65, 253 P 2d 752, 754.

Disapproval by Residents

Residents of an area sought to be annexed must register their disapproval by showing such disapproval in writing to the city clerk as required by statute. They cannot do so in courts of law. *Penland v. City of Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Time limitation for disapproval cannot be extended. *Penland v. City of Missoula*, 132 M 591, 318 P 2d 1089, 1092, 1093.

The filing of sufficient protests by resident freeholders of a first class city deprives the city council of authority to do anything except to sustain the protests and terminate the proceedings. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 756.

If the majority of the resident freeholders of a first class city protest proposed annexation, the city is without jurisdiction to proceed with the annexation. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 756.

Discretion of City Council

City council has the discretion to determine whether or not it is in the best interests of the city and the inhabitants of the area that it be annexed. *Penland v. City of Missoula*, 132 M 591, 318 P 2d 1089, 1092, distinguished in 138 M 65, 67, 353 P 2d 752, 753.

If less than a majority of the resident freeholders of a first class city protest, the city may, in its discretion, annex the area in question. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 756.

Eligibility for Incorporation

The language of this section (since amended) is unequivocal, declaring that before any territory is eligible for incorporation in a city by an extension of the city's boundaries, such territory must be (a) platted into lots or blocks, streets, and alleys; (b) a map or plat thereof must be on file with the county clerk and recorder; and (c) the territory must be contiguous to the city's limits. *Sharkey v. City of Butte*, 52 M 16, 23, 155 P 266.

Evidence of Benefits

In action for injunctive relief against resolution of intention of city council to annex land court properly excluded all evidence relating to benefits. *Penland v. City of Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Remedy for Illegal Inclusion

The remedy of injunction is available to one whose taxes would be increased by an

illegal inclusion of his property within the limits of a city. *Sharkey v. City of Butte*, 52 M 16, 23, 155 P 266.

The recital in a city council's resolution that territory proposed to be annexed to the city was contiguous and platted, when such was not the fact, could not inure to the city's benefit, or preclude a resident of the territory attempted to be annexed, from any available remedy he would otherwise have. *Sharkey v. City of Butte*, 52 M 16, 23, 155 P 266.

Where the purpose of a taxpayer's action was to have proceedings looking to the annexation of territory to a city declared void ab initio, and the city enjoined from assuming jurisdiction over the persons or property situated within unplatted territory illegally sought to be included, the attack was direct and not collateral. *Sharkey v. City of Butte*, 52 M 16, 23, 155 P 266.

Resident Freeholder

A freeholder becomes a resident under section 83-303 upon union of act and intent. If the intention to establish a permanent residence be ascertained, the recency of the establishment is immaterial. *Kunesh v. City of Great Falls*, 132 M 285, 317 P 2d 297, 301.

A resident freeholder qualified to protest annexation may be defined as one who is a resident within the area to be annexed, holding a present legal title to a freehold estate in real property located within the area to be annexed. *Kunesh v. City of Great Falls*, 132 M 285, 317 P 2d 297, 301.

Date through which timely protest could be received, set forth in the notice of resolution of intention to annex, as protest date, determines qualifications of resident freeholders to protest annexation. *Kunesh v. City of Great Falls*, 132 M 285, 317 P 2d 297, 301.

It is not necessary for resident freeholder to reside upon his freehold in order to protest annexation. *Kunesh v. City of Great Falls*, 132 M 285, 317 P 2d 297, 301.

Resolution of Intention

Exercise of discretion of city council in passing resolution of intention to annex land may be reviewed by court only when, and if, they have proceeded contrary to statute. *Penland v. City of Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Termination of Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under subdivision (1) of this section, but city council instead of terminating the annexation proceedings took arbitrary action, mandamus was proper to compel council to terminate the process. The Uniform Declaratory Judgments Act (23-2901 to 23-2916) did not furnish the protestants a plain, speedy

and adequate remedy. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 757.

Unplatted Territory

A city may not extend its boundaries so as to include unplatted ground (since amended), and proceedings had to annex territory, a portion of which was unplatted, contrary to the provisions hereof, were void in toto. Sharkey v. City of Butte, 52 M 16, 21, 155 P 266.

Unplatted territory may be annexed by a second class city. Klamn v. City of Miles City, 133 M 65, 353 P 2d 752, 753.

Collateral References

Municipal Corporations 29, 33.
62 C.J.S. Municipal Corporations § 42.

Construction of regulations as to subdivision maps or plats with respect to question of effect on corporate limits of filing or vacation of plat. 11 ALR 2d 567, 598.

11-404. Land, when deemed contiguous. Tracts or parcels of land, proposed to be annexed to a city or town, under the provision of section 11-403, shall be deemed contiguous to such city or town, even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955.

Strip of Land too Small for Platting

Triangle piece of unplatted land separated area sought to be annexed into two tracts of land. Although the triangular strip was a part of a much larger tract, that fact was immaterial. The only part

of the land which was significant was the strip separating the area sought to be annexed, not the larger area of which the separating strip was a part. If the triangular separating strip is too small or too narrow to be platted, then the tracts separated by it will be deemed contiguous. Penland v. City of Missoula, 132 M 591, 318 P 2d 1089, 1093.

11-405. (1979) Election on the question of annexation. When a city or town desires to be annexed to another and contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities respectively, the terms and conditions on which the annexation can be made, and if the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare, and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare, and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated, and when so filed the annexation is complete, and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation. Such annexations do not affect or impair any rights, obligations, or liabilities then existing, for or against either of such cities or towns.

History: En. Sec. 322, 5th Div. Comp. Stat. 1937; re-en. Sec. 427, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R. C. M. 1921.

Collateral References

Municipal Corporations 34.
62 C.J.S. Municipal Corporations § 58.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR 2d 559.

The counties of Montana are those that existed on the date of ratification of the new constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

1972 Montana Constitution, XI,2.

A "local government unit" includes but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

1972 Montana Constitution, XI,1.

A "first class city" is a city having a population of 10,000 or more. (11-201)

A "second class city" is a city having a population of more than 5,000 and less than 10,000. (11-201)

A "third class city" is a city having a population of more than 1,000 but less than 5,000. (11-201)

A "town" is a municipal corporation that has a population of 300 or more and less than 1,000. (11-201)

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Convention Notes

New provision allowing legislature to grant legislative, administrative and other powers to local government units.

1972 Montana Constitution, XI, 4.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Convention Notes

New provision allowing local government units to share powers with the state

and to have all powers not specifically denied. At present local governments have only those powers specifically granted.

1972 Montana Constitution, XI, 6.

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Convention Notes

New provision allowing local governments to share services and functions

with other units of government, the state and the United States.

1972 Montana Constitution, XI, 7.

CHAPTER 20

FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS, COMPANIES AND DISTRICTS

- Section 11-2001. Appointment of and duties of fire warden.
11-2002. Removal of dangerous chimneys, etc.—penalty.
11-2003. Fire companies—how organized.
11-2004. Elect officers, make bylaws, exempt firemen.
11-2005. County clerk may issue exempt certificates.
11-2006. Seal and record of membership.
11-2007. Duties of chief.
11-2008. Fire protection—creation of fire districts—contracts with cities,
towns and private service—dissolution and change of boundaries.
11-2009. Unconstitutional.
11-2010. Trustees of fire districts—mutual aid agreements.
11-2011 to 11-2019. Repealed.
11-2020. Volunteer Firemen's Compensation Act.
11-2021. Repealed.
11-2022. Disability, death, insurance and pension benefits.
11-2023. Qualification for compensation.
11-2024. Claim for compensation—contents—filing—limitation on time for
filing—addition of name to pension list.
11-2025. Payment of claim—beneficiaries of decedent.
11-2026. Administration of act.

- 11-2027. Rules and regulations to be made by industrial accident board and board of administration of public employees' retirement system.
 11-2028. Earnings to be part of moneys.
 11-2029. Reports of industrial accident board and public employees' retirement system.
 11-2030. Fire insurance premium tax to be paid into fund.
 11-2031. Penalty for false statements or claims.

11-2001. (5141) Appointment of and duties of fire warden. The board of county commissioners must, upon petition of ten residents of any unincorporated city, town, or village in the county, appoint a fire warden for such city, town or village, whose duty it is to examine all chimneys, stoves, stovepipes, ovens, furnaces, boilers, and appurtenances thereto belonging.

History: En. Sec. 1, p. 101, L. 1876; re-en. Sec. 3230, Pol. C. 1895; re-en. Sec. re-en. Sec. 639, 5th Div. Rev. Stat. 1879; 2074, Rev. C. 1907; re-en. Sec. 5141, R. C. re-en. Sec. 1139, 5th Div. Comp. Stat. 1887; M. 1921.

11-2002. (5142) Removal of dangerous chimneys, etc.—penalty. When any chimney, stove, stovepipe, oven, furnace, boiler, or appurtenance thereto is defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire warden, on complaint of any citizen, either orally or in writing, or upon his own examination, or other satisfactory proof, must give written notice to the owner or occupant of the building or premises, directing the owner or occupant to repair the same so as to make it secure against accident by fire; and he may in the notice require the occupant or owner to replace any defective flue or stovepipe with a new and safe one; and if the occupant or owner neglects for the space of three days to comply with the terms of said notice, he is guilty of a misdemeanor and punishable accordingly.

History: En. Sec. 2, p. 101, L. 1876; re-en. Sec. 639, 5th Div. Rev. Stat. 1879; re-en. Sec. 1140, 5th Div. Comp. Stat. 1887; re-en. Sec. 3231, Pol. C. 1895; re-en. Sec. 2075, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1921; re-en. Sec. 5142, R. C. M. 1921.

Collateral References
 Municipal Corporations 202.
 62 C.J.S. Municipal Corporations §§ 594, 601.

11-2003. (5143) Fire companies—how organized. Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in unincorporated towns and villages are organized by filing, with the county clerk of the county in which they are located, a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed every three months. There must not be allowed to any such towns or villages more than one company for each one thousand inhabitants, but one company must be allowed in any city, town, or village where the population is less than one thousand. There must not be allowed to any fire company more than twenty-eight certificate members.

History: En. Sec. 3232, Pol. C. 1895; re-en. Sec. 266, Rev. C. 1907; re-en. Sec. 5143, R. C. M. 1921. Cal. Pol. C. Sec. 3335.

References
 State ex rel. Peninsula Security Co. v. Board of County Commrs., 62 M. 69, 70, 202 P. 1108.

11-2004. (5144) Elect officers, make bylaws, exempt firemen. Every such fire company must choose or elect a foreman, who is the presiding officer, and a secretary and treasurer, and may establish and adopt bylaws and regulations, and impose penalties, not exceeding five dollars, or expulsion for each offense. The officers and members of unpaid fire companies regularly organized and exempt firemen are entitled to the following privileges and exemptions, viz.: Exemption from payment of poll tax, road tax, and head tax of every description; exemption from jury duty; exemption from military duty, except in case of war, invasion, or insurrection. Every fireman who has served five years in an organized company in this state is an "exempt fireman," and must receive from the chief engineer of the department to which he belonged a certificate to that effect. Every active fireman must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs; such certificates must be countersigned by the secretary, and over the seal of the company, if one is provided. Each certificate entitles the holder to exemption from military and jury duty.

History: En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R. C. M. 1921.

50 C.J.S. Juries § 153; 62 C.J.S. Municipal Corporations §§ 598, 599; 64 C.J.S. Municipal Corporations § 1697; 84 C.J.S. Taxation § 57.

Collateral References

Jury ⤷ 55; Municipal Corporations ⤷ 194, 672; Taxation ⤷ 106.

11-2005. (5145) County clerk may issue exempt certificates. In lieu of issuing certificates to exempt firemen by the chief of the fire department, as provided in the last section, on the certificate of the foreman and secretary of any fire company, or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military and jury duty.

History: En. Sec. 3234, Pol. C. 1895; re-en. Sec. 2078, Rev. C. 1907; re-en. Sec. 5145, R. C. M. 1921.

11-2006. (5146) Seal and record of membership. Every fire department regularly organized may adopt a department seal, the name of the particular fire department to which it belongs, which must be under the control of and for the use of the secretary, and be by him affixed to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties. The secretary of the fire department, or fire company must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued; and when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates. Every such certificate is prima facie evidence of the facts therein stated.

History: En. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R. C. M. 1921.

11-2007. (5147) Duties of chief. The chief of every fire department must inquire into the cause of every fire occurring in the town of which he is the chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires with his badge of office conspicuously displayed, must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by any justice of the peace.

He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than thirty (30) hours of instruction per year in matters pertaining to fire fighting, and he must supervise the operation of such plan or program. On or before the first day of September of each year, he must prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, stating whether or not his volunteer fire company qualified under the provisions of subparagraph two (2) A of section 11-2023 during the preceding fiscal year, and setting forth the full name and residence address of each member of his department who satisfactorily completed such thirty (30) hours of instruction during said preceding fiscal year, under the provisions of subparagraph two (2) C of section 11-2023. Such verified certificate must be maintained in a permanent file by said public employees' retirement system for the purpose of establishing eligibility for participation in the volunteer firemen's pension plan, and must be open for inspection as a public record.

History: En. Sec. 3233, 2d. C. 1895;
re-en. Sec. 2080, Rev. C. 1907; re-en. Sec.
5147, R. C. M. 1921; and Sec. 6, Ch. 118,
L. 1965.

Cross-References
Inspection of fire equipment of build-
ings, sec. 69-1808.
Investigation of fires, sec. 82-1209.

11-2008. (5148) Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries. (a) The board of county commissioners is authorized to establish

fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50% or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by mailing a copy of the notice by first class mail to each freeholder in the district at the address above shown in the assessment roll, by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

(b) Any fire district organized under this act may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within such fire district and who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection (a) above shall apply to such requests for dissolution of fire districts.

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%) or more, of the privately owned lands of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%) or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll, by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original districts shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

1973 SUPPLEMENT

(d) Change of boundaries—annexation. Adjacent territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of fifty per cent (50%), or more of the area of privately owned lands of the adjacent area proposed to be annexed, and who constitute a majority of the taxpaying freeholders within such proposed area to be annexed, whose names appear upon the last completed assessment roll, shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition, in accordance with the procedure outlined in subsection (c) above; and shall allow the annexation of such proposed adjacent territory, unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the original district, and who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the privately owned lands of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

1973 SUPPLEMENT

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec.

1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd.

Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963.

to the constitution of the United States of America. Great Northern Ry. Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished 138 M 69, 73, 354 P 2d 1056, 1058.

Constitutionality

The provisions of this section, as amended in 1953, for levy of a special assessment upon property within districts without notice to property owners were unconstitutional as being in direct conflict with the due process of law clause in section 27, article III, Montana constitution and the first clause of the fourteenth amendment

References

State ex rel. Peninsula Security Co. v. Board of County Commrs., 62 M 69, 70, 202 P 1108; Harrison v. City of Missoula, 146 M 420, 407 P 2d 703.

Collateral References

Municipal Corporations—3, 27, 28, 51. 62 C.J.S. Municipal Corporations §§ 7 et seq., 41, 101.

11-2009. (5148.1) Unconstitutional.

Unconstitutional

This section (Sec. 1, Ch. 148, L. 1925), authorizing establishment of fire limits within unincorporated towns, was held unconstitutional in Great Northern Ry. Co. v. Roosevelt County, 134 M 355, 332 P 2d 501.

This section (Sec. 1, Ch. 148, L. 1925)

was a denial of due process in conflict with section 27, article III, Montana constitution and the first clause of the fourteenth amendment to the constitution of the United States of America. Great Northern Ry. Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 73, 354 P 2d 1056, 1058.

11-2010. (5149) Trustees of fire districts—mutual aid agreements.

a) Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall, as far as possible, be the same as provided in the school election laws for school districts of the second class; except, that only electors who are taxpayers affected by the special fire district levies may vote at such elections, and be qualified to serve as trustees; and except, also, there need be no special registration of electors.

(b) Power of trustee. The trustees shall organize by choosing a chairman, and appointing one member to act as secretary. They shall prepare and adopt suitable bylaws; appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies. The trustees shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district; and shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, which has any boundary line lying within five (5) straight line miles of any boundary line of such district, whether the city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by the city or town or by such other fire district, to property included within such district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any such fire district may elect to make such a contract. Likewise, the trustees may contract to permit such fire district's equipment and facilities to be used by the cities, towns, or other fire districts which have any boundary lines lying within five (5) straight line miles of any boundary line of such district. Likewise, the trustees may enter into contracts with public or private parties under which such district fire company may extend fire protection to public or private property lying outside of such district or any other district or city limits, but within five (5) straight line miles of any boundary line of such district, whether such public or private property shall lie within the same county or another county; and such district fire company may use such fire district's equipment and facilities outside of such district in the performance of such contracts. All moneys received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(d) A mutual aid agreement is an agreement for protection against natural or man-made disasters. Fire district trustees may enter such agreements with the proper authority of

- (1) other fire districts
- (2) unincorporated municipalities
- (3) incorporated municipalities
- (4) state agencies which have fire prevention services
- (5) private fire prevention agencies
- (6) federal agencies.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1917; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1917; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973.

Amendments

The 1969 amendment added the last two sentences to subsection (c).

The 1973 amendment substituted "which has any boundary line lying within five (5) straight line miles of any boundary line" in the first and second sentences of subdivision (c) for "lying within five (5) miles of the farthest limits"; substituted "such a contract" at the end of the first sentence of subdivision (c) for "a contract with the city fire department for fire protection, or to be included in the

References

State ex rel. Powers v. Dale, 47 M 227, 229, 131 P 670.

Collateral References

Municipal Corporations 167-169.
62 C.J.S. Municipal Corporations § 542.

fire district protection facilities"; substituted "lying outside of such district or any other district or city limits, but within five (5) straight line miles of any boundary line" in the third sentence of subdivision (c) for "lying more than one (1) mile outside of the district or any other district or city limits, but within five (5) miles of the farthest limits"; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 333, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 333, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

1973 SUPPLEMENT

11-2011 to 11-2019. (5150 to 5155) Repealed—Chapter 75, Laws of 1953.

Repeal

These sections (Secs. 2 to 10, Ch. 107, L. 1911; Sec. 1, Ch. 130, L. 1923), relating

to a bond election and the proceeds thereof for a fire district, were repealed by Sec. 3 Ch. 75, Laws 1953.

11-2020. (5158.1) Volunteer Firemen's Compensation Act. This act shall be known and may be cited as the Volunteer Firemen's Compensation Act.

History: En. Sec. 1, Ch. 65, L. 1935.

Right of firemen to recover under workmen's compensation acts. 10 ALR 201 and 81 ALR 473.

Collateral References

Municipal Corporations—176 (3).

62 C.J.S. Municipal Corporations §§ 563, 591.

11-2021. (5158.2) Repealed—Chapter 147, Laws of 1963.

Repeal

This section (Sec. 2, Ch. 65, L. 1935), creating the volunteer firemen's compensa-

tion fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

11-2022. (5158.3) Disability, death, insurance and pension benefits.
1. Every member of a fire company organized in an unincorporated area, town or village under the laws of this state, shall be entitled to receive compensation for disability incurred while in the performance of his duties

as such fireman, when such disability necessitates the services of a physician or surgeon, while confined or nonconfined, in the following amounts:

a. If confined to a hospital, the actual cost of hospitalization, and the reasonable charges of a duly licensed physician or surgeon, not to exceed two thousand five hundred dollars (\$2,500).

b. If not confined to a hospital, the actual reasonable charges of a duly licensed physician or surgeon, not to exceed seven hundred fifty dollars (\$750).

c. If confined to his home, and such confinement necessitates the services of a nurse, then the actual charges of such nurse, together with actual reasonable charges of a duly licensed physician or surgeon, not to exceed one thousand seven hundred fifty dollars (\$1,750).

2. Where an injury incurred in line of such duty results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the board shall order them an artificial member or members be furnished to supply the loss thereof. The expense of furnishing such members shall not exceed the following amounts: Hand or arm to elbow, two hundred fifty dollars (\$250); arm above elbow, three hundred dollars (\$300); foot or leg, two hundred fifty dollars (\$250); eye, twenty-five dollars (\$25); teeth, one hundred seventy-five dollars (\$175). The replacement of an artificial member so furnished shall be required every five (5) years, if necessary.

3. To aid in defraying funeral expenses of a fireman covered under this act whose death occurs in line of duty, an amount not to exceed the sum of two hundred fifty dollars (\$250) shall be allowed.

4. To encourage and aid volunteer fire departments to maintain group insurance for benefits on account of death or injury incurred by members while in the performance of duties as volunteer firemen, the sum of fifty dollars (\$50) per year for each mobile unit of fire-fighting equipment, not exceeding two (2) such units in number for any such department, shall be paid to each volunteer fire department maintaining such insurance, or to the organization or agency maintaining such insurance for any such volunteer fire department.

5. In the case of every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant shall be entitled thereafter to participate in the volunteer firemen's pension plan as provided in this act, and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars (\$1,000,000) then the industrial accident board shall set aside and pay over to the public employees' retirement system, the smaller of such amount in excess of one million dollars (\$1,000,000), or an amount equal to ninety-five per cent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year, for the payment by said public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing said amount set aside by the number of claimants qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such amount set aside shall be sufficient to pay each such qualified claimant at least twenty dollars (\$20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said amount set aside shall not be sufficient to pay each qualified claimant at least twenty dollars (\$20) per month, then each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of fifty dollars (\$50) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of fifty dollars (\$50) per month to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant. The fiscal year for the purpose of this act shall begin on the first day of July of each year and end on the last day of June of each year.

1973 SUPPLEMENT

History: En. Sec. 3, Ch. 65, L. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973.

Amendments

The 1971 amendment removed from the first sentence of subsection 5 a requirement that the volunteer fireman himself complete and file the claim; substituted "as provided in this act" for "Throughout the remainder of his lifetime" in the latter part of the first sentence of subsection 5; substituted "claimant" for "vol-

unteer fireman" throughout subsection 5; inserted the next to last sentence in subsection 5; and made minor changes in phraseology.

The 1973 amendment substituted "the smaller of such amount in excess of one million dollars (\$1,000,000), or an amount equal to ninety-five per cent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year," for "said excess amount"; increased the maximum pension from twenty-five to fifty dollars per month; and made minor changes in style and phraseology.

11-2023. (5158.4) Qualification for compensation. (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated area, town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) Years of service. (I) To qualify for full participation he must have completed a total of at least twenty (20) years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village. (II) If prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire company, or by personal relocation due to transfer or loss of employment, or by personal disability, or by other factor beyond his reasonable control, then he may qualify for partial participation if he has completed at least ten (10) years' service; in that event, he shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20). (III) Provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of two thousand five hundred dollars (\$2,500) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8), nine (9) or ten (10) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (but he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age);

(C) During each of the years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company;

(D) He must have ceased to be an active member of any volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village, and if he applies for and receives pension benefits hereunder, he shall not thereafter be eligible to become an active member of any such volunteer fire company;

(E) He must not be eligible for benefits under any fire department relief association organized in any incorporated area.

(F) Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief of each volunteer fire company shall on or before September 1, 1968, prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled.

History: En. Sec. 4, Ch. 65, L. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973.

Amendments

The 1969 amendment inserted "area" before "town or village" in subsection (1); and substituted "two thousand five hundred dollars (\$2,500)" for "seven hundred fifty dollars (\$750)" and added class "ten (10)" in subdivision (2)(A).

The 1971 amendment reduced the service requirements specified in subdivision (2)(A) from twenty to ten years; inserted in subdivisions (2)(A) and (2)(B) identical provisos reading: "provided, that in the case of any volunteer fireman having completed at least ten (10) years' but less than twenty (20) years' service as an active volunteer fireman, then the claimant hereunder shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the nu-

merator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20)"; and made minor changes in phraseology.

The 1973 amendment divided subdivision (2)(A) into clauses with Roman numerals; inserted "To qualify for participation" at the beginning of clause (2)(A)(I); increased the service required by clause (2)(A)(I) from ten to twenty years; substituted clause (2)(A)(II) for the proviso inserted in subdivision (2)(A) by the 1971 amendment; deleted from subdivision (2)(B) the proviso added by the 1971 amendment; divided subdivision (2)(C) into subdivisions (2)(C) and (2)(F); inserted new subdivisions (2)(D) and (2)(E); and made minor changes in style.

Effective Date

Section 3 of Ch. 199, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 7, 1973.

11-2024. (5185.5) Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list. 1. A fireman claiming compensation under subparagraphs one (1), two (2), three (3) or four (4), of section 11-2022, must file his claim with the industrial accident board upon a form to be provided therefor, which claim shall contain the name and address of the claimant, date, place and manner of incurring of disability, name and address of attending physician or surgeon and/or nurse, if any, dates of confinement, if confined, or if not confined, dates of attendance by physician or surgeon, dates of attendance by nurse; affidavit of attending physician or surgeon as to nature of disability, number and dates of attendance and statement of charges; if confined to hospital, an affidavit of person in charge stating nature of disability, dates of confinement and expenses incurred while so confined; affidavit of chief or secretary of fire company stating that said fire company was duly organized under the laws of Montana in an unincorporated town or village, statement that claimant was, at the date of disability an active enrolled member of such company, and that the disability was incurred in line of duty; an affidavit of the nurse stating the nature of disability, dates of attendance, and statement of charges for services; said claim shall be verified by the claimant, the attending physician or surgeon and nurse, if any, and by the person in charge of the hospital, if confined; said claim shall be filed with the board within one (1) year from the date of disability.

2. A claimant claiming eligibility under the volunteer firemen's pension plan must file his claim with the public employees' retirement system upon a form to be provided therefor by the public employees' retirement system, which claim shall contain the name, address and date of birth of the claimant, and of the volunteer fireman if other than the claimant; the fiscal year for which eligibility shall commence; the years during which service as a volunteer fireman was rendered and the name or names of the volunteer fire company or companies with which such service was rendered. Such claim shall be filed on or before the first day of May of any year. The public employees' retirement system may require such proof of age and service as it may deem proper, but the certificates filed or to be filed under section 11-2007 and subparagraph 2 of section 11-2023 shall be accepted by the public employees' retirement system as prima facie proof of such service. If such claim be properly filed and such claimant be found by the public employees' retirement system properly qualified to participate in such volunteer firemen's pension plan, then the name of the claimant shall be added to the list of qualified persons and the claimant shall then be entitled to participate in said volunteer firemen's pension plan as of the fiscal year beginning the first day of July following the filing of such claim.

• History: En. Sec. 5, Ch. 65, L. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 30, L. 1971.

Amendments

The 1971 amendment substituted "claim-

ant" or "person" for "volunteer fireman" in two places in subsection 2; inserted "and of the volunteer fireman if other than the claimant" after "date of birth of the claimant" in the first sentence of subsection 2; and made minor changes in phraseology and style.

11-2025. (5155.6) Payment of a claim—beneficiaries of decedent. 1. Upon receipt of a claim under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

2. All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any volunteer fireman who has not reached the age of fifty-five (55) years but who has otherwise qualified for full participation hereunder, or in the event of the death after February 27, 1971, of any volunteer fireman who has not reached the age of fifty-five (55) years but who has otherwise qualified for partial participation hereunder, or in the event of the death of any such volunteer fireman after he has qualified for full participation hereunder but before he has received payments hereunder totaling at least two thousand dollars (\$2,000), or in the event of the death of any such volunteer fireman after February 27, 1971 and after he has qualified for partial participation hereunder but before he has received payments hereunder totaling a proportion of two thousand dollars (\$2,000) determined under the formula set forth in section 11-2023 (2)(A)(II); and if such deceased volunteer fireman shall have left a widow, then such full or partial participation pension shall be paid or continue to be paid to said widow by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of said widow, until her death or remarriage; or if said deceased volunteer fireman shall have left no widow but shall have left a child or children under the age of eighteen (18) years, then such full or partial participation pension shall be paid or continue to be paid to the guardian or other person having custody of the said child or children, until the youngest child shall reach the age of eighteen (18) years. Provided, further, that in the event of such payments after the death of a volunteer fireman, to or for his widow or children, then such pension shall terminate, and no further payments shall be made hereunder, in the case of a full participation pension when a total of two thousand dollars (\$2,000) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death, or in the case of a partial participation pension, when a total of a proportion of two thousand dollars (\$2,000) determined under the formula set forth in section 11-2023 (2)(A)(II) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death. If such deceased volunteer fireman shall leave neither widow nor child under the age of eighteen (18) years, then his pension shall terminate at the end of the month prior to the month in which his death occurs.

History: Amd. Sec. 1, Ch. 163, L. 1974.

1974 SUPPLEMENT

11-2026. (5158.7) Administration of act. (1) Except as provided hereinafter, the industrial accident board of the state of Montana shall administer the Volunteer Firemen's Compensation Act, and all payments made under subparagraph (1) of section 11-2025, R. C. M. 1947, shall be made by warrants drawn by the board.

(2) The board of administration of the public employees' retirement system of the state of Montana shall administer the volunteer firemen's pension plan, and all payments made under subparagraph (2) of section 11-2025 shall be made by warrants drawn by the public employees' retirement system. Annually, on or before fifteen (15) days after the close of each fiscal year, the industrial accident board shall notify the secretary or board of administration of the public employees' retirement system in writing of the balance remaining in the volunteer firemen's compensation fund as of the end of said fiscal year.

History: En. Sec. 7, Ch. 65, L. 1935;
amd. Sec. 193, Ch. 147, L. 1963; amd. Sec.
1, Ch. 160, L. 1967.

11-2027. (5158.8) Rules and regulations to be made by industrial accident board and board of administration of public employees' retirement system. The industrial accident board shall make such rules and regulations as it deems necessary and advisable in its administration of the Volunteer Firemen's Compensation Act, not inconsistent with the provisions hereof. The board of administration of the public employees' retirement system shall make such rules and regulations as it deems necessary and advisable in its administration of the volunteer firemen's pension plan, not inconsistent with the provisions hereof. Necessary expenses of the industrial accident board for office supplies, stationery and forms in connection with its administration of the Volunteer Firemen's Compensation Act shall be a charge against the fund. Necessary expenses of the public employees' retirement system for office supplies, stationery and forms in connection with its administration of the volunteer firemen's pension plan shall be a charge against the fund, and shall be drawn from said

fund by the public employees' retirement system through warrants to be executed by the industrial accident board upon request of the public employees' retirement system, at such intervals as the board of administration of the public employees' retirement system shall deem proper.

History: En. Sec. 8, Ch. 65, L. 1935;
amd. Sec. 2, Ch. 160, L. 1967.

Collateral References

Workmen's Compensation 1091-1094.
100 C.J.S. Workmen's Compensation
§ 385.

11-2028. (5158.9) Earnings to be part of moneys. All earnings made by moneys earmarked by section 11-2030 by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of such moneys.

History: En. Sec. 9, Ch. 65, L. 1935;
amd. Sec. 194, Ch. 147, L. 1963.

11-2029. (5158.10) Reports of industrial accident board and public employees' retirement system. (1) The industrial accident board shall, at the time specified in section 92-542 for making report therein provided, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration under the Volunteer Firemen's Compensation Act, with such suggestions or recommendations as it may deem of value for public information.

(2) The public employees' retirement system shall, not later than the first day of November of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration under the volunteer firemen's pension plan, with such suggestions or recommendations as it may deem of value for public information.

(3) Copies of all such reports shall be made available by the industrial accident board or the public employees' retirement system to the chief or other representative of any volunteer fire company or companies within the state of Montana which shall at any time request the same.

History: En. Sec. 10, Ch. 65, L. 1935;
amd. Sec. 5, Ch. 118, L. 1965; amd. Sec.
1, Ch. 159, L. 1967.

11-2030. (5158.11) Fire insurance premium tax to be paid into fund. The state auditor and ex officio commissioner of insurance of the state of Montana shall annually deposit in the earmarked revenue fund, such sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted. Such moneys shall be used for the payment of claims and administrative costs as provided in section 11-2025 and 11-2026.

History: En. Sec. 11, Ch. 65, L. 1935;
amd. Sec. 1, Ch. 125, L. 1947; amd. Sec.
1, Ch. 164, L. 1959; amd. Sec. 191, Ch.
147, L. 1963.

Collateral References

Insurance 7.
44 C.J.S. Insurance § 71.

11-2031. (5158.12) Penalty for false statements or claims. Any person required to make a statement or affidavit hereunder, who shall will-

fully falsify such statement or affidavit, and any person who shall file a false claim hereunder, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not exceeding five hundred (\$500.00) dollars, or to undergo imprisonment not exceeding six months, or both such fine and imprisonment ***

History: En. Sec. 12, Ch. 65, L. 1935.

The counties of Montana are those that existed on the date of ratification of the new constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

1972 Montana Constitution, XI,2.

A "local government unit" includes but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

1972 Montana Constitution, XI,1.

A "first class city" is a city having a population of 10,000 or more. (11-201)

A "second class city" is a city having a population of more than 5,000 and less than 10,000. (11-201)

A "third class city" is a city having a population of more than 1,000 but less than 5,000. (11-201)

A "town" is a municipal corporation that has a population of 300 or more and less than 1,000. (11-201)

CHAPTER 3

CHANGES IN CLASSIFICATION OF CITIES AND TOWNS

- Section 11-301. Proceedings for advancement and census.
11-302. Resolution declaring the advancement.
11-303. New officers—election.
11-304. Old ordinances, etc., remain in force until repealed.
11-305. Cities may be reduced in class—proceedings.
11-306. Disincorporation of city or town—proceeding.
11-307. Duty of county clerk and city or town treasurer—property and money to be turned over.

11-301. (4969) Proceedings for advancement and census. Whenever it manifestly appears to a city or town council from the last federal, state, county, city, or town census, that such city or town has the requisite population to entitle it to be classified as provided in section 11-201 of this code, such city or town must be advanced as provided in the next section.

History: En. Sec. 4950, Pol. C. 1895; Collateral References
amd. Sec. 1, p. 225, L. 1897; re-en. Sec. Census 2, 8, 9; Municipal Corporations
3447, Rev. C. 1907; re-en. Sec. 4969, E. C. 22.
M. 1921. 14 C.J.S. Census § 2; 62 C.J.S. Municipal Corporations § 36.

11-302. (4970) Resolution declaring the advancement. If it appears by such census that the city or town contains the requisite population to be advanced, the council must thereupon, by resolution, declare that the town is advanced to a city of the first, second, or third class, or a city of the third class is advanced to a city of the second or first class, or a city of the second class is advanced to a city of the first class, as the case may be, and file a certified copy of such resolution in the office of the county clerk of the county and in the office of the secretary of state. Whereupon such town becomes a city of the first, second, or third class, and a city of the third class becomes a city of the second or first class, and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this code relative to cities and towns.

History: En. Sec. 4951, Pol. C. 1895; 3448, Rev. C. 1907; re-en. Sec. 4970, R. C.
amd. Sec. 2, p. 225, L. 1897; re-en. Sec. M. 1921.

11-303. (4971) New officers—election. The first election of officers of the new municipal corporation organized under the provisions of this

chapter must be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

History: En. Sec. 4952, Pol. C. 1895;
re-en. Sec. 3449, Rev. C. 1907; re-en. Sec.
4971, R. C. M. 1921.

11-304. (4972) Old ordinances, etc., remain in force until repealed. All ordinances, bylaws, and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this code relative to cities and towns, remain in force until repealed by the council of the new municipal corporation.

History: En. Sec. 4953, Pol. C. 1895;
re-en. Sec. 3450, Rev. C. 1907; re-en. Sec.
4972, R. C. M. 1921.

11-305. (4973) Cities may be reduced in class—proceedings. Whenever it appears by the census taken by the United States, state, or otherwise, that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by a resolution, declare that such city be reduced to a city of the second class or town, as the case may be. A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this code relative to cities and towns. The provisions of sections 11-303 and 11-304 of this code apply to this section.

History: En. Sec. 4954, Pol. C. 1895; re-en. Sec. 3451, Rev. C. 1907; re-en. Sec. 4973, R. C. M. 1921.

11-306. (4974) Disincorporation of city or town—proceeding. Whenever it appears by such census that a city or town has a population of less than five hundred (500) inhabitants, the corporate existence of such city or town under this code relative to cities and towns, may be discontinued, upon the filing of a petition requesting that such corporate existence be discontinued, signed by at least two-thirds ($\frac{2}{3}$) of the resident freeholders of said city or town, as certified to by the county clerk and recorder of the county in which said city or town is situated, with the board of county commissioners of said county. Upon the filing of said petition as above provided, with the board of county commissioners, the said board must declare by resolution, that the incorporation thereof be discontinued, and must provide for the payment of the indebtedness of the same, and thereafter annually levy a tax on all the property situated within the limits of such city or town until all of such indebtedness is paid. The books, documents, records, papers and seal of such city or town must be deposited with the county clerk for safekeeping and reference, and the records of the police judge or police court must be deposited with one of the justices of the peace of the township in which such city or town is situated, who has power to execute and complete all unfinished business of such police judge or court.

History: En. Sec. 4955, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4974, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1931.

Certificate of County Clerk

The county clerk is authorized to certify to the fact that the petition is signed by the required number of resident freeholders. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

While ordinarily the certificate, made by the county clerk under this section, that the petition for disincorporation meets the requirements of the act, is conclusive and the board of county commissioners must make the order of disincorporation, mandamus should not issue to compel it to do so, if fraud or mistake on the part of the clerk be made apparent, the board having the implied power to disallow the petition if, at a hearing, wrongdoing or mistake be proven. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Investigation by County Clerk

In carrying out the command of this section, the county clerk has the implied power of investigating and determining who

are the resident freeholders of the town the disincorporation of which is sought, whether or not the signatures to the petition are genuine, and whether or not the total number of bona fide signers thereof constitute at least two-thirds of the resident freeholders. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Withdrawal of Signatures of Petitioners

Signers of a petition for disincorporation may withdraw therefrom at any time before the county clerk has certified thereto and filed it with the board of county commissioners, unless they signed under misrepresentations of material facts to induce action on their part, in which event, if they act promptly, they may be allowed to withdraw after the date of filing, provided their proof of fraud be clear and convincing. State ex rel. Peck v. Anderson, 92 M 298, 301, 13 P 2d 231.

Collateral References

Municipal Corporations 49-51; Towns 14.

62 C.J.S. Municipal Corporations §§ 101-105; 87 C.J.S. Towns § 17.

11-307. (4975) Duty of county clerk and city or town treasurer — property and money to be turned over. The county clerk must send a certified copy of the resolution of discontinuance to the secretary of state, and all moneys in the hands of the city or town treasurer must be paid to the county treasurer, which must be applied in payment of the indebtedness of such city or town, and all other property must be delivered to the board of county commissioners, which must be sold and disposed of for the purpose of paying such indebtedness.

History: En. Sec. 4956, Pol. C. 1895; re-en. Sec. 3153, Rev. C. 1907; re-en. Sec. 4975, R. C. M. 1921.

CHAPTER 31

COMMISSION FORM OF GOVERNMENT

- Section 11-3101. Any city may reorganize under commission form.
11-3102. Submission to electors—petition and order of election.
11-3103. Proclamation of election.
11-3104. Ballots—form.
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11-3115. Fees for filing for office.
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11-3117. City to be governed by mayor and councilmen—right to vote.
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- 11-3119. Rights and powers of mayor—approval of measures.
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11-3121. Supervisory powers of mayor and councilmen—election of officers—police judge.
11-3122. Creation or discontinuance of other offices—compensation.
11-3123. Place of office of councilmen—salaries and compensation.
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11-3128. Civil service.
11-3129. Publication of report by council—examination of accounts.
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11-3132. Recall of elective officers.
11-3133. Ordinance—how submitted—petition and election.
11-3134. Taking effect and suspension of ordinances.
11-3135. Abandonment of commission form.
11-3136. Requirements of petitions.
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CHAPTER 32

COMMISSION-MANAGER FORM OF GOVERNMENT

- Section 11-3201. Any city may reorganize under commission-manager form.
11-3202. Submission of question to electors—petition and order of election.
11-3203. Proclamation of election.
11-3204. Ballots—form.
11-3205. Certificate of result of election—election not to be held within two years after failure to adopt.
11-3206. Special election for electing commissioners.
11-3207. Manner of conducting election—canvassing votes.
11-3208. Laws governing city—ordinances—territorial limits and property.
11-3209. Organization of communities or groups of communities as municipality—election proclamation—election of commissioners.
11-3210. Powers of municipalities under commission-manager plan.
11-3211. Form of government to be known as commission-manager plan—composition of commission—powers.
11-3212. Qualification of commissioners—tenure of office—expiration of terms.
11-3213. Filling of vacancies in commission.
11-3214. Qualifications of commissioners—holding other public office forbidden—interest in contracts not allowed—accepting gratuities forbidden.
11-3215. Nomination of candidates—primary election.
11-3216. Ballots—form, contents and distribution—qualification of electors—conduct of election.
11-3217. Arrangement of names of candidates on ballot.
11-3218. Date of holding regular elections—special elections.
11-3218.1. Dispensing of general election.
11-3219. Filing of election expenses of candidates—penalty for violations.
11-3220. Recall of commissioners—petition for recall.
11-3221. Issuance of petition papers.
11-3222. Signatures and affidavit to petition papers.
11-3223. Assembling and filing of petition papers.
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11-3225. Ballots at recall election—requirements—nomination of candidates to fill vacancies.
11-3226. Effect of majority vote for or against recall.
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11-3228. Working for candidate forbidden.
11-3229. Bribery—false answers concerning qualifications of elector—voting by disqualified person.
11-3230. Proposed ordinances—how submitted—requirements of petition to submit.

- 11-3231. Signatures and affidavit to-petitions.
- 11-3232. Assembling and filing of petition papers—hearing upon proposed ordinances—submission to electors.
- 11-3233. Submission of petition and proposed ordinance to clerk.
- 11-3234. When proposed ordinance is to be submitted to electors.
- 11-3235. Contents of ballot—when proposed ordinance becomes effective.
- 11-3236. Repealing ordinances—publication, amendment and repeal of initiated ordinances.
- 11-3237. When ordinances of commission take effect—petition for repeal suspends effect unless law is complied with.
- 11-3238. Reconsideration of ordinance—submission to electors—failure to approve operates as repeal.
- 11-3239. Contents and requirements of referendum petitions—ballots.
- 11-3240. Other ordinances subject to referendum.
- 11-3241. Highest affirmative vote prevails when referendum ordinances conflict.
- 11-3242. Emergency ordinances subject to referendum—rules applicable.
- 11-3243. Ordinances providing for expenditures, bond issues, public improvements submitted to electors—preliminary steps prior to election—qualifications of electors.
- 11-3244. Oath of commissioners.
- 11-3245. Designation of mayor—procedure in case of tie vote—vacancy in office of mayor—powers and duties of mayor.
- 11-3246. Selection of successor to mayor in event of his recall—mayor when all commissioners are recalled.
- 11-3247. Quorum of commissioners—recording votes and proceedings.
- 11-3248. Compensation of commissioners and mayor.
- 11-3249. Meetings of commission — unauthorized absence creates vacancy — meetings and minutes to be public — rules and order of business.
- 11-3250. Form of ordinances and resolutions—appropriations—manner of passing and approving—amendments.
- 11-3251. Form of ordinances and resolutions—appropriations—manner of passing and approving—amendments—time of taking effect—emergency measures—ordinances which cannot pass as such.
- 11-3252. Appointment of clerk and other officers—duties of clerk.
- 11-3253. Auditing books of accounts, records, etc.—matters to be included in statement—printing and distribution of report—publication of summary.
- 11-3254. Record of ordinances and resolutions, and authorization thereof—publication of number and title.
- 11-3255. Investigation of financial transactions—powers in conducting investigations—contempt—privilege of witness.
- 11-3256. Appointment of city manager.
- 11-3257. Powers and duties of city manager.
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- 11-3260. Administrative departments—power of commission concerning.
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- 11-3262. Municipal plan board—advisory boards.
- 11-3263. Department of law.
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- 11-3265. Department of public welfare.
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- 11-3267. Department of finance — accounts — collection and disbursement of funds—purchase and sale of property and supplies.
- 11-3268. Sinking fund trustees.
- 11-3269. Advertising and matter for publication.
- 11-3270. Limit on amount of contract not approved by city manager and commission.
- 11-3271. Police judge—appointment and powers.
- 11-3272. Civil service board—establishment—term of office—removal of members—abolishment.
- 11-3273. Classified and unclassified service.
- 11-3274. Rules and regulations governing appointments—other duties of board.
- 11-3275. Chief examiner—duties.
- 11-3276. Promotions in classified service.
- 11-3277. Probationary period.
- 11-3278. Discharges or reductions in rank—how made.
- 11-3279. Appeal to civil service board.
- 11-3280. Present incumbents to retain positions unless same are abolished.
- 11-3281. Salaries to be withheld until names of appointees or employees are certified.
- 11-3282. Power of board to procure testimony in investigation.
- 11-3283. Persons in classified service not affected by political or religious opinions or race —political contributions and activity forbidden.
- 11-3284. Penalties for violation of civil service provisions—to be prescribed by board.
- 11-3285. Fixing of salaries and appropriation for civil service.
- 11-3286. Officer authorized to execute conveyances of real property—resolution.

CHAPTER 33

COMMISSION-MANAGER FORM OF GOVERNMENT (continued)

- a 11-3301. Local improvements—assessments—laws governing.
- 11-3302. Sewer, water, gas, or other connections—notice to property owners—service and contents.
- 11-3303. Survey and plats of lands subdivided for sale.
- 11-3304. Effect of recorded map or plat.
- 11-3305. Director of public service as supervisor of plats—powers and duties.
- 11-3306. Restriction as to acceptance of streets and alleys by municipality.
- 11-3307. Care, control, improvement, etc. of public highways and places.
- 11-3308. Improvement and vacation of streets and highways.
- 11-3309. Acceptance of dedication of streets and alleys necessary.
- 11-3310. Vacating or changing names of streets, etc.—proceedings.
- 11-3311. Appropriation of property for public or municipal purposes.
- 11-3312. Power of commission to grant rights to occupy streets, highways, etc.—ordinances and resolutions.
- 11-3313. Renewal of franchises.
- 11-3314. No exclusive franchise or renewal to be granted.
- 11-3315. Manner of use and occupation of streets and public grounds to be prescribed.
- 11-3316. Extension of public utility subject to referendum.
- 11-3317. When property owner's consent to public utility necessary.
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- 11-3319. Appropriation ordinance—details concerning.
- 11-3320. Power of first commission over appropriations already made.
- 11-3321. Transfer of funds.
- 11-3322. Unexpended appropriations—manner of drawing moneys and incurring obligations.
- 11-3323. Fixing salaries and compensation—disposition of fees and moneys.
- 11-3324. Repealed.
- 11-3325. Persons holding office at time act takes effect—powers and duties imposed by present laws.
- 11-3326. Official oath.
- 11-3327. Saving clause as to contracts, work and improvements.
- 11-3328. Eight-hour day may be established.
- 11-3329. Assessment for removal of snow and ice from sidewalks, etc.
- 11-3330. Abandonment of commission-manager plan—proceedings.
- 11-3331. Laws continued in force by this chapter.
- 11-3332. Repealing clause and exception.
- 11-3333. Effect of organization of communities into single municipal district.
- 11-3334. Name of new municipal district.
- 11-3335. Property vests in new municipality—improvements payable by special assessments—unpaid indebtedness of old municipalities.
- 11-3336. Rental of county buildings—contracts with county commissioners for work—rate of compensation.

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Convention Notes

New provision allowing legislature to grant legislative, administrative and other powers to local government units.

1972 Montana Constitution, XI, 4.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Convention Notes

New provision allowing local government units to share powers with the state

and to have all powers not specifically denied. At present local governments have only those powers specifically granted.

1972 Montana Constitution, XI, 6.

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Convention Notes

New provision allowing local governments to share services and functions

with other units of government, the state and the United States.

1972 Montana Constitution, XI, 7.

11-101. (4955) General powers. A city or town is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this chapter, or in special laws heretofore enacted.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; re-en. Sec. 4700, Pol. C. 1895; re-en. Sec. 3202, Rev. C. 1907; re-en. Sec. 4955, R. C. M. 1921. Cal. Pol. C. Sec. 4354.

Construction of Section

This section, taken in connection with section 11-104, and subdivision 1 of section 11-901, constitutes a general grant of power, as well as a limitation of power, for authority is given to the city to pass all ordinances necessary for its government and management, and such ordinances shall not contravene constitutional or statutory provisions. *City of Helena v. Kent*, 32 M 279, 283, 80 P 239.

No consistency whatever has been observed in the legislative use of the term "town." *State ex rel. Powers v. Dale*, 47 M 227, 230, 131 P 670.

The entire municipal code is to be treated as one statute whose provisions are interdependent. *Brown v. Foster*, 48 M 114, 118, 135 P 993.

Doubt as to Power

A city has only such authority as is conferred upon it by express legislative declaration or necessary implication, and where there is a fair and reasonable doubt as to the existence of a particular power, it must be resolved against the municipality and the power denied. *Davenport v. Kleinschmidt*, 6 M 502, 527, 13 P 249; *City of Helena v. Kent*, 32 M 279, 283, 80 P 239; *State ex rel. Quintia v. Edwards*, 40 M 287, 303, 106 P 695; *Helena Light & Ry. Co. v. City of Helena*, 47 M 18, 31, 130 P 446; *Shapard v. City of Missoula*, 49 M 269, 278, 141 P 544; *Sharkey v. City of Butte*, 52 M 16, 19, 155 P 266; *State ex rel. City of Billings v. Billings Gas Co.*, 55 M 102, 108, 173 P 799.

Judicial Notice

In an action against a city to recover damage for injuries to real property, an averment in the complaint that the city "is a municipal corporation, organized and existing under the laws of the state," was sufficient as against the objection that the pleading did not state a cause of action. Judicial notice will be taken of the fact that during a certain year a city was a municipal corporation existing under the laws of this state. *Drew v. City of Butte*, 44 M 124, 125, 119 P 279.

Mode of Exercising Power

When the mode of exercising any power is pointed out in the statute granting it

to a municipal corporation, the mode thus prescribed must be pursued in all substantial particulars. *McGillie v. Corby*, 37 M 249, 254, 93 P 1063; *Carlson v. City of Helena*, 39 M 82, 109, 102 P 39; *Shapard v. City of Missoula*, 49 M 269, 278, 141 P 544.

Power Conferred by Grant or Implication

A city has no powers except such as are conferred upon it by legislative grant either directly or by necessary implication. *Davenport v. Kleinschmidt*, 6 M 502, 527, 13 P 249; *City of Helena v. Kent*, 32 M 279, 283, 80 P 239; *Palmer v. City of Helena*, 40 M 498, 507, 107 P 512; *Sharkey v. City of Butte*, 52 M 16, 19, 155 P 266; *Stephens v. City of Great Falls*, 119 M 368, 175 P 2d 408, 410.

Street Improvements

It is the duty of a city organized under the laws of this state to establish and improve streets, and damages can be recovered by one who is injured by its negligence in permitting its streets to become and remain in a dangerous condition. *Sullivan v. City of Helena*, 10 M 134, 141, 25 P 94; *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756; *May v. City of Anaconda*, 26 M 140, 142, 66 P 759; *Ford v. City of Great Falls*, 46 M 292, 306, 127 P 1004.

References

Davis v. Stewart, 54 M 429, 434, 171 P 281; *State ex rel. McLeod v. District Court*, 67 M 164, 168, 215 P 240; *State ex rel. Altop v. City of Billings*, 79 M 25, 33, 255 P 11; *State ex rel. McIntire v. City Council of the City of Libby*, 107 M 216, 219, 82 P 2d 587; *Pollard v. Montana Liquor Control Board*, 114 M 44, 46, 131 P 2d 974.

Collateral References

Municipal Corporations \Rightarrow 57; Towns \Rightarrow 1.

62 C.J.S. Municipal Corporations § 106; 87 C.J.S. Towns § 1.

37 Am. Jur. Municipal Corporations, p. 720, § 111 et seq.; p. 893, § 276 et seq.

Power of municipal corporation to accept and administer trust. 10 ALR 1363.

Liability of municipal corporation upon implied contract for use of property which it received under an invalid contract. 42 ALR 632.

Power of municipal corporation or authorities to employ detectives. 45 ALR 737.

Municipal power to acquire, maintain

11-102. (4956) Distribution of powers of cities. Every city has legislative, executive, and judicial power. Its legislative power is vested in a city council, its executive power in a mayor and his subordinate officers, and its judicial power in a police court.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4701, Pol. C. 1895; re-en. Sec. 3203, Rev. C. 1907; re-en. Sec. 4956, R. C. M. 1921. Cal. Pol. C. Sec. 4355.

Delegation of Powers

A city cannot, even by express attempt, delegate any powers to others than those who are empowered by statute either as officers or employees to act for the city. Municipalities have only such powers as are expressly granted, and such powers cannot be delegated. A city is, of course, liable for damages arising out of the negligence of its officers and employees for acts done within the scope of their employment, but not otherwise. Lazich v.

City of Butte, 116 M 386, 390, 154 P 2d 260.

Transfer to Successors

In the exercise of its legislative powers, a city is ruling its people, and is bound to transmit its powers of government to its successive sets of officers unimpaired. *Stato ex rel. Great Falls Water Works v. City of Great Falls*, 19 M 518, 534, 49 P 15.

References

Stato ex rel. O'Hern v. Loud, 92 M 307, 310, 14 P 2d 432.

Collateral References

Municipal Corporations 53, 54, 57.
62 C.J.S. *Municipal Corporations* § 109.

11-103. (4957) Distribution of powers of towns. Every town has legislative, executive, and judicial power. Its legislative power is vested in a town council, its executive power in a mayor and his subordinate officers, and its judicial power in justices of the peace of the township in which the town is situated.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4702, Pol. C. 1895; re-en. Sec. 3204, Rev. C. 1907; re-en. Sec. 4957, R. C. M. 1921.

11-104. (4958) City or town, how named, general corporate powers. Every city or town organized under this title is entitled "the city of....." (naming it), or "the town of....." (naming it), and by such name has perpetual succession; may sue and be sued in all courts and places, and in all proceedings whatsoever, and may have and use a common seal; may purchase, receive, have, take, hold, lease, use, and enjoy property of every name or description, and dispose of the same for the common benefit; and has such other powers as are incident to municipal corporations not inconsistent with the laws of the United States or the state.

History: Ap. p. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R. C. M. 1921.

Extent of Powers

Municipalities may exercise only powers not in conflict with general law, unless additional power is plainly granted them.

Stephens v. City of Great Falls, 119 M 368, 175 P 2d 408, 411.

Mandamus to Compel Payment of Bill

Mandamus will lie to compel a city to audit and pay a bill which it owes to a water company for the rent of hydrants, although this section provides that cities may sue or be sued. *Stato ex rel. Great*

CHAPTER 7

OFFICERS AND ELECTIONS

- Section 11-701. Officers of city of the first class.
 11-702. Officers of city of second and third classes.
 11-703. Officers of towns.
 11-704. Repealed.
 11-705. Council has power to abolish office.
 11-706. Power to consolidate offices.
 11-707. City or town to be divided into wards.
 11-708. Division of cities and towns into wards.
 11-709. Biennial elections in cities and towns—terms of office.
 11-710. Qualification of mayor.
 11-711. Terms of aldermen—how decided.
 11-712. Terms of office—when to begin.
 11-713. Who eligible.
 11-714. Qualification of aldermen.
 11-715. Registration of electors.
 11-716. Qualifications of electors.
 11-717. Election judges and clerks—voting places.
 11-718. Canvass—when and how made.
 11-719. Oath and bonds—vacancy.
 11-720. When duties of office begin.
 11-721. Vacancies—how filled—removal of officer.
 11-722. Repealed.
 11-723. Repealed.
 11-724. Salaries must be fixed.
 11-725. Salaries and qualifications of mayor and aldermen.
 11-726. Salaries of police judges.
 11-727. Compensation of justices of the peace acting as police judge.
 11-728. Salary of city treasurer.
 11-729. Salary of city attorney.
 11-730. Salary of chief of police.
 11-731. Salary of city or town clerk.
 11-732. Salary must not be increased or diminished during term.
 11-733. Constitutional oath of office must be taken.
 11-734. Duties and compensation of other officers.

CHAPTER 7—OFFICERS AND ELECTIONS

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- Section
 11-709. Biennial elections in cities and towns—terms of office.
 11-719. Oath and bonds—vacancy.
 11-721.1. Recall of elective officers.
 11-725. Salaries and qualifications of mayor and alderman.
 11-727. Compensation of justices of the peace acting as police judge.

CHAPTER 8

EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE
AND ATTORNEY

- Section 11-801. Executive officers.
11-802. Powers of mayor.
11-803. Mayor to preside, sign warrants, etc.
11-804. Council to elect president.
11-805. Duties of clerk.
11-806. Financial statement of city or town—contents—copies, to whom furnished.
11-807. Duties of city treasurer.
11-808. Transfer of municipal funds—how made.
11-809. Cities may close inactive accounts, when.
11-810. Duties of chief of police.
11-811. Qualifications, term of office and duties of city attorney.
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CHAPTER 8—EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—
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- 11-802.1. Strong mayor form of government authorized.

CHAPTER 9

POWERS OF CITY AND TOWN COUNCILS

- Section 11-901. Powers of city councils.
11-902. Levy and collection of taxes.
11-903. Licenses—requirements.
11-904. Issuing licenses.
11-905. Building or hiring and lighting and heating buildings for municipal purposes.
11-906. Streets, alleys, sidewalks, parks and public grounds.
11-907. City council may change street names or numbers.
11-908. Plat and filing.
11-909. Lighting and cleaning streets—regulation of sidewalks—removal of offensive material from public ways and grounds—tax levy.
11-910. Regulation of public ways and grounds—obstructions to be prevented.
11-911. Traffic and sales on public ways and grounds.
11-912. Speed regulation.
11-913. Railroads—regulation of use and speed.
11-914. Lighting of railroad tracks—crossings—enforcement of requirements.
11-915. Street railroads—authorization and regulation.
11-916. Numbering of houses and lots.
11-917. Water regulation.
11-918. Licensing, taxing and regulation.
11-919. Records of pawn, secondhand and junk shops, requirement of.
11-920. Regulation of purchases from minors by pawn, secondhand and junk shops.
11-921. Regulation of dances.
11-922. Suppression of fraud and immoral publications.
11-923. Establishment and supervision of markets.
11-924. Inspection of foodstuffs.
11-925. Weighing, measuring and inspecting.
11-926. Regulation of vaults, cisterns, hydrants, pumps, sewers and gutters.
11-927. Prevention of and punishment for disturbing the peace.
11-928. Limitation of combustible buildings—fire limits.
11-929. Fire department—alarm—police telegraph.
11-930. Provision for fire equipment.
11-931. Inspection and regulation of fire hazards.
11-932. Regulation of explosives and inflammable material.
11-933. Bonfires—pyrotechnics—toy pistols or guns—regulation by council.
11-934. Cruelty to animals.
11-935. Abatement of and regulation concerning nuisances.
11-936. Vagrants and mendicants.
11-937. Jail—maintaining and governing.
11-938. Animals running at large.
11-939. Licensing of dogs.
11-940. Obstructing streets, sidewalks and public grounds to be prevented.
11-941. Sidewalks—prevention of animals or vehicles on—prevention of damage to.
11-942. Hitching of animals—racing and immoderate driving.
11-943. Regulation of coasting, skating, sliding and other amusements.
11-944. Location of businesses and factories.
11-945. Erection of poles, wires, rods and cables.
11-946. Boards of health.
11-947. Detention hospitals.
11-948. Cemeteries.
11-949. Officers' and employees' duties and compensation.
11-950. Penalties for violations of ordinances—limitations.
11-951. Poll tax—limitation on amount—work for failure to pay.
11-952. Partition fence and party wall regulation.
11-953. Construction specification—fire escapes.
11-954. Use of county jail.
11-955. Workhouse—construction authorized—use.
11-956. Licensing of vehicles and carriages—rates.
11-957. Fire hazardous manufactories—firearms—concealed weapons.
11-958. Weights and measures—sealer.
11-959. Inspection and measuring of building materials.
11-960. Arrest of persons.
11-961. Planting and protection of trees.
11-962. Reports of officers may be required.
11-963. Sales of poisons and opium.
11-964. Disposal or lease of city property—approval of electors, when required.
11-965. Contracts.
11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.
11-967. Sidewalks, foot pavements, curbs and gutters.

- 11-968. Granting of railroad rights of way—regulation of railroads—speed—flagmen at street crossings.
 - 11-969. Fire escapes and safety exits.
 - 11-970. Grading of streets—requirements for change of grade.
 - 11-971. Sprinkling of streets and public places.
 - 11-972. Location of steam boilers—signs and awnings—constructions from sidewalks.
 - 11-973. Prize fights and boxing matches.
 - 11-974. Requiring owners to repair dangerously damaged structures.
 - 11-975. Laying of gas, water and other mains.
 - 11-976. Public grounds.
 - 11-977. Power of condemnation.
 - 11-978. Appropriation of money and payment of debts and expenses.
 - 11-979. Census may be taken.
 - 11-980. Printing contract.
 - 11-981. Securing water supply.
 - 11-982. Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.
 - 11-983. Hats and bonnets in theaters and public amusement places.
 - 11-984. Ditches, drains and flumes in city or town.
 - 11-985. Noxious weed extermination—tax.
 - 11-986. Acquisition of landing fields and parking areas—jurisdiction.
 - 11-987. Power to license and regulate soft drink establishments and pool and billiard halls.
 - 11-988. Power of cities and towns to acquire natural gas and distributing system therefor.
 - 11-989. Inspection and measurement of gas and electricity.
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- 11-951. Poll tax—limitation on amount—work for failure to pay.
 - 11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent.
 - 11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary.
 - 11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.
 - 11-982. Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.
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CHAPTER 10

POWERS OF CITY AND TOWN COUNCILS (continued)

- Section 11-1001. Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations.
- 11-1002. Regulation of motor vehicles and their speed.
- 11-1003. "Motor vehicles" defined.
- 11-1004. Organized cities and towns authorized to take by gift, donation, devise, etc.
- 11-1005. Who may make gift, donation, or grant—property included therein—how used and administered.
- 11-1006. Public bodies' and institutions' authority to receive property by gifts.
- 11-1007. Applicable provisions.
- 11-1008. Public baths.
- 11-1009. Power to maintain and regulate.
- 11-1010. Certain cities may provide public band concerts.
- 11-1011. Tax levy for band concerts.
- 11-1012. What constitutes a quorum.
- 11-1013. Council may prescribe rules.
- 11-1014. Ayes and noes must be called, and a majority elects.
- 11-1015. Parking meters in cities or towns of 2,500 population or less.
- 11-1016. Referendum on parking meters required before ordinance.
- 11-1017. Existing meters and ordinances unaffected.
- 11-1018. Acquisition, construction and maintenance of parking areas—bond issues.
- 11-1019. Operation of bus lines—contracting indebtedness.
- 11-1020. Operation subject to Motor Carrier Act—exception.
- 11-1021. Contracts or lease arrangements with independent carriers of passengers—when authorized—levy of tax.
- 11-1022. Bids for service—operation of carriers.
- 11-1023. Contracting with highway commission and/or federal agencies regarding construction or reconstruction of highways, streets, and roads.
- 11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions.

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- 11-1001. Authorization of cities and towns to furnish water and sewage service to industries and to persons without city limits—rates—penalty for violations.
- 11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions.

CHAPTER 14

BUDGET SYSTEM FOR CITIES AND TOWNS

- Section 11-1401. Municipal budget law—application—definitions. U A
11-1402. Fiscal year defined.
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- 11-1406. Hearings on budget—adoption—fixing of tax levy.
11-1407. Budget appropriations and outstanding warrants.
11-1408. Appropriations—transfers among appropriations—use of borrowed
money—liabilities for expenditures in excess of budget.
11-1409. Emergency expenditures—notice and hearing—objections by taxpay-
ers—appeal—notice and hearing dispensed with in extreme cases—
emergency warrants—tax levy—lapse of appropriations.
11-1410. Clerk's report of expenditures and liabilities against budget appropri-
ations, receipts from taxes and other sources.
11-1411. State examiner to make rules and regulations for carrying out act—
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11-1412. Construction of act.
11-1413. Violation of act constitutes misdemeanor.
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CHAPTER 5

ALTERATION OF BOUNDARIES, EXCLUSION AND INCLUSION OF TERRITORY

- Section 11-501. Alteration of boundaries of cities and towns—exclusion of portion.
 11-502. Petition—contents—notice—consideration of communications—action of council—meaning of terms “contiguous” and “adjacent.”
 11-503. Resolution and map to be filed—effective date of resolution.
 11-504. Liability of excluded territory for existing indebtedness.
 11-505. Jurisdiction of city or town for levying tax to pay existing indebtedness.
 11-506. Alteration of boundaries of cities and towns—inclusion of territory—petition and election.
 11-507. Submission of question of annexation—election, how conducted and returned—annexation, when complete.
 11-508. Territory which may not be annexed.
 11-509. Lands used for certain purposes may not be annexed.
 NOTE: → 11-510. Act not applicable to cities of less than 20,000 and not more than 35,000 population.
 11-511. Contiguous land owned by government—desire for annexation—procedure.
 11-512. Land deemed contiguous.
 11-513. Validation of prior annexations of government land.

11-501. (4979.1) Alteration of boundaries of cities and towns—exclusion of portion. The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this act.

History: En. Sec. 1, Ch. 33, L. 1027.

Collateral References

Municipal Corporations 26, 27; Towns 6-8.

62 C.J.S. Municipal Corporations § 41; 87 C.J.S. Towns § 18.

37 Am. Jur., Municipal Corporations, pp. 632-634, §§ 15, 16; pp. 639-661, §§ 23-42.

Liability in respect of taxes derived from territory improperly annexed to municipal or political division. 35 ALR 477.

Rights and remedies of creditor of municipal corporation which is dissolved or combined with another municipal body. 47 ALR 128.

Facts warranting extension or reduction of municipal boundaries. 62 ALR 1011.

Constitutionality of statute for formation or change of municipal corporations as affected by objection that they impose nonjudicial functions on courts. 69 ALR 266, 290.

Right of political division to challenge acts or proceedings by which its boundaries are affected. 86 ALR 1367, 1374.

Power of legislature to detach land from municipal corporations. 117 ALR 267.

Injunction against municipal tax upon ground involving attack on inclusion of property within municipal boundaries. 129 ALR 255, 261.

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR 2d 1279.

11-502. (4979.2) Petition—contents—notice—consideration of communications—action of council—meaning of terms “contiguous” and “adjacent.” (1) A petition in writing signed by a number of the qualified electors residing within the corporate limits of such city or town, equal to a majority of the votes cast at the last city election held therein, or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with clerk of such city or town. Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made,

and shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described. Said petition shall also describe the streets, alleys, avenues and public places, if any, in the territory sought to be excluded, and shall distinctly specify which of said streets, avenues, alleys or public places are to be retained for the use of the public after the territory has been excluded from the corporate limits of such city or town. Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof.

(2) If said council by resolution, duly and regularly passed and adopted, shall find that said petition is signed by the requisite number of qualified electors of said city or town, or by the owners of not less than three-fourths in value of the territory to be excluded, and that the territory petitioned to be excluded is within the corporate limits and on the border thereof, and that the granting of said petition will be to the best interest of such city or town and the inhabitants thereof, and will not materially mar the symmetry of such city or town, the city or town clerk of such city or town shall forthwith cause to be published in the newspaper nearest such territory petitioned to be excluded, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of such city or town by the exclusion of the territory petitioned to be excluded, from the owners of the territory proposed to be excluded.

(3) The clerk shall, at the next regular meeting of the city or town council, after expiration of the said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town shall be altered so as to exclude the territory described in said petition. Said resolution shall also describe the streets, avenues, alleys and public places in said excluded territory which are to be vacated and abandoned and, upon the filing of the certified copy of the resolution as hereinafter provided, all such streets, avenues, alleys and public places, unless expressly excepted in said resolution, shall be deemed to be vacated and abandoned and the title thereto shall revert to the owners of the adjacent property. Such resolution shall not be finally adopted by such council after written disapproval by a majority of the owners in value of the territory proposed to be excluded, nor after written disapproval or protest by a majority of the owners in value of property within the corporate limits of said city or town immediately adjacent and contiguous to the territory sought to be excluded. That for the purposes of this act the words "contiguous" and "adjacent" shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

History: En. Sec. 2, Ch. 33, L. 1927;
and Sec. 2, Ch. 130, L. 1935.

Collateral References

Municipal Corporations § 56.
62 C.J.S. Municipal Corporations § 56.

11-503. (4979.3) Resolution and map to be filed—effective date of resolution. Within thirty days after the passage and approval of said resolution, a copy thereof duly certified by the clerk of said city or town, together with a map showing the corporate limits of said city or town as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said city or town is located. Said resolution shall become effective thirty days after its passage and approval, and thereafter the boundary of said city or town shall be as set forth in said resolution.

History: En. Sec. 3, Ch. 33, L. 1927.

11-504. (4979.4) Liability of excluded territory for existing indebtedness. Such alteration shall not relieve any territory excluded from the limits of a city or town, from its liability on account of any outstanding bonded indebtedness of such city or town, or any indebtedness of any improvement district of which the excluded territory is a part, existing at the time of the passage of such resolution.

History: En. Sec. 4, Ch. 33, L. 1927.

Collateral References

Municipal Corporations \Rightarrow 36 (3).

62 C.J.S. Municipal Corporations § 78.

11-505. (4979.5) Jurisdiction of city or town for levying tax to pay existing indebtedness. For the purpose of levying any tax or assessment necessary for the collection of any of the indebtedness specified in section 11-504, the territory so excluded shall be and remain under the jurisdiction of such city or town.

History: En. Sec. 5, Ch. 33, L. 1927.

Collateral References

Municipal Corporations \Rightarrow 36 (4).

62 C.J.S. Municipal Corporations § 79.

11-506. Alteration of boundaries of cities and towns—inclusion of territory—petition and election. (1) The boundaries of any incorporated town or city, whether heretofore or hereafter formed, may be altered and new territory or territories annexed thereto, incorporated and included therein, and made a part thereof, upon proceedings being had and taken as in this act provided. The council, or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory or territories asked to be annexed to such corporation, and signed by not less than thirty-three and one-third per cent ($33\frac{1}{3}\%$) of the resident freeholder electors of the territory proposed to be annexed must, without delay, submit to the electors of such municipal corporation and to the electors residing in the territory or territories proposed by such petition to be annexed to such corporation, the question whether such new territory or territories shall be annexed to, incorporated in, and made a part of said municipal corporation.

(2) Such question may be so submitted at the next general municipal election to be held in such municipal corporation, or it may be so submitted prior to such general election, either at a special election called therein for that purpose, or at any other municipal election therein. ex-

cept an election at which the submission of such question is prohibited by law; and such council or legislative body is hereby empowered to and it shall be its duty to cause notice to be given of such election by the publication of a notice thereof in a newspaper printed and published in such municipal corporation at least once a week for a period of three (3) successive weeks next preceeding the date of such election, or if there is no newspaper printed in such municipal corporation, then such notice shall be published in like manner for a like period in the nearest town or city in the county in which said territory or territories to be annexed is situated, in which such newspaper is printed. Such notice shall distinctly state the proposition to be submitted, i. e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof; and in said notice the qualified electors of said municipal corporation, and the qualified electors residing in said territory or territories so proposed to be annexed, shall be invited to vote upon such proposition by placing upon their ballots the words "for annexation" or "against annexation," or words equivalent thereto.

(3) Such council or legislative body is hereby empowered, and it shall be its duty, to establish, and in such notice of election designate the voting precinct or precincts, the date of said election, the place or places at which, and the hours between which the polls will be opened for such election, and such other information regarding said election as the said council or legislative body may deem proper. Such place or places shall be that or those commonly used as voting places within such municipal corporation, and also that or those commonly used by the electors residing in such new territory or territories.

History: En. Sec. 1, Ch. 168, L. 1915.

11-507. Submission of question of annexation—election, how conducted and returned—annexation, when complete. (1) If the question of annexation is submitted at a special election called for such purpose, the city or town council, or other legislative body, shall fix the hours through which the polls are to be kept open, which shall be not less than eight (8), and which must be stated in the notice of election, and may appoint a smaller number of judges than is required at a general city or town election, but in no case shall there be less than three (3) judges in a precinct and such judges shall act as their own clerks. If the question of annexation is submitted at a general city or town election, the polls shall be kept open during the same hours as are fixed for the general election, and the judges and clerks for such general election shall act as the judges and clerks thereof.

(2) Whenever the question of annexation under this title is submitted at either a general city or town election, or at a special election, separate ballots, white in color and of convenient size, shall be provided therefor. The election shall be conducted, and the returns made in the same manner as other city or town elections; and all election laws governing city and town elections shall govern in so far as they are applicable, but if such question be submitted at a general city or town election, the votes

thereon must be counted separately, and separate returns must be made by the judges and clerks at such election. If the said annexation election is held at the same time as a general city or town election, then the returns shall be canvassed by the city or town council at the same time as the returns for such general election; but if the question of annexation is submitted at a special election, then the city or town council shall meet within ten (10) days after the date of the holding of such special election and canvass the returns.

(3) If it is found that a majority of such votes were cast in favor of the annexation, the city or town council, or other legislative body shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for such annexation. Such resolution shall recite that a petition has been filed with the said council or other legislative body with a sufficient number of signatures of thirty-three and one-third per cent ($33\frac{1}{3}\%$) of the resident freeholder electors of the territory proposed to be annexed; a description of the boundaries of the territory or territories to be annexed; a copy of the resolution ordering a general or special election thereof, as the case may be; a copy of the notice of such election; the time and result of the canvass of the votes received in favor of annexation, and the number thereof cast against annexation; and that the boundaries of such city or town, by such resolution, shall be extended so as to embrace and include such territory or territories as the same are described in the petition for annexation, which said resolution shall be incorporated in the minutes of said council or legislative body.

(4) The clerk or other officer performing the duties of clerk of such council or legislative body, shall promptly make and certify under the seal of said municipal corporation, a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed, is situated. From and after the date of the filing of said document in the office of the said county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete and thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made, has the power to pass all necessary ordinances pertaining thereto.

History: En. Sec. 2, Ch. 168, L. 1915.

Collateral References

Municipal Corporations \S 34.

62 C.J.S. Municipal Corporations \S 58.

Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation. 18 ALR 2d 1255.

11-508. Territory which may not be annexed. No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated town or city, shall be annexed under the provisions of this act.

History: En. Sec. 3, Ch. 168, L. 1915.

11-509. Lands used for certain purposes may not be annexed. No parcel of land which, at the time such petition for such proposed annexa-

tion is presented to such council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto, shall be annexed under the provisions of this act.

History: En. Sec. 4, Ch. 168, L. 1945.

11-510. Act not applicable to cities of less than 20,000 and not more than 35,000 population. This act shall not be applicable to cities having a population, as shown by the last preceding federal census, of less than twenty thousand (20,000) and not more than thirty-five thousand (35,000) and shall not repeal section 11-403 having reference to extension of the corporate limits of cities of the first, second and third classes to include contiguous land, but is intended and does provide an alternative method for the annexation of territory or territories to municipal corporations. When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this act the provisions of this act and of such amendments thereto as may thereafter be adopted, and no other, shall apply to such proceedings.

History: En. Sec. 5, Ch. 168, L. 1945.

11-511. Contiguous land owned by government—desire for annexation—procedure. Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana, or by any agency, instrumentality, or political subdivision of either, or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous, and may be annexed thereto and made a part thereof, in the following manner:

1. The administrative head of the owner of the land, or the administrative head of the holder of a beneficial interest in the land, shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner of, or the holder of, the beneficial interest in the land desires to have it annexed. Whereupon, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

2. The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for two successive weeks, a notice that such resolution has been duly and regularly passed, and that for a period of twenty (20) days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

3. At the time and place set for the public hearing aforesaid, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation, and if the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land.

4. Within thirty (30) days after the passage and approval of said resolution, a copy thereof duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located. Said resolution shall become effective thirty (30) days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

History: En. Sec. 1, Ch. 189, L. 1957.

References

Harrison v. City of Missoula, 146 M
420, 407 P 2d 703.

11-512. Land deemed contiguous. The land proposed to be annexed to a municipality under the provisions of this act shall be deemed contiguous to such municipality, even though such land may be separated from such municipality by a street, or other roadway, a sidewalk, or by a public way of any kind, or by an irrigation ditch or drainage ditch, or by some other strip too small for the erection of houses.

History: En. Sec. 2, Ch. 189, L. 1957.

11-513. Validation of prior annexations of government land. Any annexation heretofore made of land with respect to which the United States or the state of Montana, or any agency, instrumentality or political subdivision of either, was at the time of annexation either owner or possessor of a beneficial interest therein, is hereby validated and confirmed.

History: En. Sec. 3, Ch. 189, L. 1957.

(1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

'1972 Montana Constitution, XI,3.

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Convention Notes

New provision directing legislature to pass laws concerning procedures for local voters to design their own forms of government (self-government charters). The charter provisions concerning structure of

local governments would take precedence over general laws on such matters.

Cross-References

County government, alternative forms, secs. 16-5001 to 16-5019.

Section 8. Initiative and referendum. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Convention Notes

New provision directing legislature to give residents the power to initiate local ordinances by petition or to petition to vote on ordinances passed by local governments.

Cross-References

County initiative and referendum, secs. 37-301 to 37-311.

Municipal initiative and referendum, secs. 11-1104 to 11-1114.

Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

CITIES AND TOWNS

CHAPTER 34

CITY AND COUNTY CONSOLIDATED GOVERNMENT

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CITY AND COUNTY CONSOLIDATED GOVERNMENT (continued)

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1973 SUPPLEMENT
CHAPTER 44—INTERLOCAL CO-OPERATION COMMISSION—
IMPROVEMENT OF ESSENTIAL LOCAL GOVERNMENTAL SERVICES

Section

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- 11-4402. Definitions.
- 11-4403. Establishment of an interlocal co-operation commission.
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INTERLOCAL CO-OPERATION COMMISSION

11-4403

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11-4401. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of the state of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand, and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

(2) It is the purpose of this act to provide a method whereby the residents of local areas in Montana may propose local solutions to these common problems in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

<p>History: En. Sec. 1, Ch. 129, L. 1969.</p> <p>Title of Act</p> <p>An act providing for the creation of</p>	<p>interlocal co-operation commissions to consider and propose means of improving essential local governmental services in Montana.</p>
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11-4402. Definitions. As used in this act:

(1) "Commission" means an interlocal co-operation commission established pursuant to section 3 [11-4403] of this act.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city or town.

History: En. Sec. 2, Ch. 129, L. 1969.

11-4403. Establishment of an interlocal co-operation commission. An interlocal co-operation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal co-operation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities and towns having any jurisdiction in the county under consideration. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the clerk and recorder of the county and an interlocal co-operation commission shall be deemed to be authorized.

(2) A petition requesting the establishment of an interlocal co-operation commission shall be signed by at least ten (10) per cent of the qualified voters within the county registered for the last preceding general election and shall be filed with the clerk and recorder of the county.

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Upon receipt of such a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures thereon. Within thirty (30) days following receipt of such petition, the clerk and recorder shall transmit the same to the board of county commissioners and to the governing body of all cities and towns having any jurisdiction in the county together with his certificate as to the sufficiency thereof and an interlocal co-operation commission shall be deemed to be authorized.

Only one (1) commission may be established in a county at any one time.

History: En. Sec. 3, Ch. 129, L. 1969.

11-4404. Selection of an interlocal co-operation commission. (1) Any interlocal co-operation commission established pursuant to this act shall consist of members to be selected as follows:

- (a) Four (4) members selected by the county commissioners.
 - (b) Four (4) members appointed by the mayor of the principal city and confirmed by the governing body of the city.
 - (c) One (1) member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town.
 - (d) One (1) member, who shall be chairman of the interlocal co-operation commission, selected by the other members of the commission at their initial meeting.
- (2) Each member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.
- (3) No member shall be an official or employee of any unit of local government.

History: En. Sec. 4, Ch. 129, L. 1969.

11-4405. Time of appointment. The members of the interlocal co-operation commission shall be appointed within sixty (60) days after the commission is authorized.

History: En. Sec. 5, Ch. 129, L. 1969.

11-4406. Meetings of commission. (1) Not later than eighty (80) days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners.

(2) At the first meeting of the commission, one (1) of the members appointed by the board of county commissioners shall be designated by that body to serve as temporary chairman. As its first official act, the commission shall select a chairman from outside its own membership.

(3) Further meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members of the commission.

History: En. Sec. 6, Ch. 129, L. 1969.

11-4407. Vacancies—compensation—open meetings—quorum—rules.

(1) In case of a vacancy for any cause, a new member shall be appointed

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in the same manner as the member he replaces.

(2) Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(3) All meetings of the commission shall be open to the public.

(4) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(5) Each member shall have one (1) vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by section 13 [11-4413] of this act, but other actions may be by a majority of those present and voting. Each commission may adopt such other rules for its proceedings as it deems desirable.

History: En. Sec. 7, Ch. 129, L. 1969.

11-4408. Considerations in preparation of proposals. A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics and predominantly rural areas. In the formation of its proposals which can include arrangements for county-wide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

(1) The existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use, wherever possible, of comprehensive land-use plans prepared for the area by organized planning boards or other reliable surveys;

(2) The need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

(3) Population density, distribution and growth, per capita assessed valuation, the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

(4) The boundaries of existing units of local government;

(5) Maintenance of citizen access to, control of, and participation in local government;

(6) Such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: En. Sec. 8, Ch. 129, L. 1969.

11-4409. Comprehensive program. The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both county-wide and urban areas bases, as it deems desirable.

History: En. Sec. 9, Ch. 129, L. 1969.

11-4410. Recommendations to implement program. In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

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(1) Performance of one or more services by any existing unit of local government;

(2) Consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies or by contractual agreements;

(3) Consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) Creation of a new special service district to perform one or more services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

(5) Annexation of unincorporated territory to any existing city or town;

(6) Consolidation of any existing cities and towns with any other existing cities and town;

(7) Consolidation of any cities and towns with the county in which they lie;

(8) Creation of a permanent council of governments, consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) Creation of a unified government for the entire county vested with (a) any and all powers which cities are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana, and (b) any and all powers which counties are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana.

(10) Any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration, or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of the state of Montana.

History: En. Sec. 10, Ch. 129, L. 1969.

11-4411. Consideration of property and debts. (1) The commission shall determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and county-wide services and shall determine and provide in its proposed program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: En. Sec. 11, Ch. 129, L. 1969.

11-4412. Public hearings on proposed program. Within three (3) years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and county-wide services and shall provide for adequate publication and explanation of its program. Notice of hearings shall be published once each week for at least two (2) weeks preceding a hearing, in at least

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one (1) newspaper of general circulation in the county. The notice shall state the time and place of the hearing.

History: En. Sec. 12, Ch. 129, L. 1969; Amendments
amd. Sec. 1, Ch. 70, L. 1971.

The 1971 amendment extended the time
for the preparation of proposals from two
years to three years after organization.

11-4413. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district, a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes any change, alteration, interlocal agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(3) If the comprehensive plan includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of the state of Montana, the commission shall make such recommendation or recommendations to the ensuing legislative assembly.

History: En. Sec. 13, Ch. 129, L. 1969.

11-4414. Additional powers and duties. A commission shall have the following additional powers and duties:

(1) To contract and co-operate with other agencies, public or private as it considers necessary for the rendition and affording of such services, facilities, studies and reports to the commission as will best assist it to carry out the purposes for which the commission was established. Upon request of the chairman of the commission, all state agencies and all counties and other units of local government, and the officers and employees thereof, shall furnish the commission such information as may be necessary for carrying out its functions which may be available to or procurable by such agencies or units of government.

(2) To consult and retain such experts, and to employ such executive, clerical and other staff, as, in the commission's judgment, may be necessary.

(3) To accept and expend moneys from any public or private source, including the federal government. All moneys received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

(4) To do any and all other things as are consistent with and reasonably required to perform its functions under this act.

History: En. Sec. 14, Ch. 129, L. 1969.

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11-4415. Appropriations. The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: En. Sec. 16, Ch. 129, L. 1969.

11-4416. Term of commission. All commissions shall terminate five (5) years from the date of their establishment. However, a commission, upon completion of its duties, may terminate earlier by a vote of three-fourths ($\frac{3}{4}$) of the members favorable to such earlier termination.

History: En. Sec. 16, Ch. 129, L. 1969; amd. Sec. 2, Ch. 70, L. 1971.

Amendments

The 1971 amendment extended the time specified in the first sentence from four years to five years after establishment.

Separability Clause

Section 17 of Ch. 129, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 18 of Ch. 129, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 26, 1969.

CHAPTER 49

INTERLOCAL CO-OPERATION

Section 16-4901. Purpose.
16-4902. Short title.
16-4903. Definitions.
16-4904. Interlocal agreements.

16-4901. Purpose. It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to co-operate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

History: En. Sec. 1, Ch. 82, L. 1967.

16-4902. Short title. This act shall be known and cited as the Interlocal Co-operation Act.

History: En. Sec. 2, Ch. 82, L. 1967.

16-4903. Definitions. For the purposes of this act the term "public agency" shall mean any political subdivision, including municipalities.

counties, school districts and any agency or department of the state of Montana.

History: En. Sec. 3, Ch. 82, L. 1967.

16-4904. Interlocal agreements. Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity or undertaking which any of said public agencies entering into the contract is authorized by law to perform provided that such contract shall be authorized and approved by the governing body of each party to said contract. Such contract shall set forth fully the purposes, powers, rights, obligations and responsibilities of the contracting parties and shall specify the following:

- (1) Its duration.
- (2) The precise organization, composition and nature of any separate legal entity created thereby.
- (3) The purpose or purposes of said interlocal contract.
- (4) The manner of financing the joint or co-operative undertaking and establishing and maintaining a budget therefor.
- (5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
- (6) Any other necessary and proper matters.
- (7) Provision for an administrator or a joint board responsible for administering the joint or co-operative undertaking including representation of the contracting parties on said joint board.
- (8) The manner of acquiring, holding, and disposing of real and personal property used in the joint or co-operative undertaking.
- (9) Every agreement made hereunder shall, prior to and as a condition precedent to its performance, be submitted to the attorney general of the state of Montana who shall determine whether the agreement is in proper form and compatible with the laws of the state of Montana. The attorney general shall approve any agreement submitted to him hereunder unless he shall find it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within thirty (30) days of its submission shall constitute approval thereof.
- (10) Within ten (10) days after the approval by the attorney general, and prior to commencement of its performance said interlocal contract made pursuant to this act shall be filed with the county clerk and recorder of the county or counties where said political agencies are situate and with the secretary of state of the state of Montana.
- (11) Any public agency entering into an interlocal contract pursuant to this act may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefor as may be within its legal power to furnish.

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History: En. Sec. 4, Ch. 82, L. 1967.

Separability Clause

Section 5 of Ch. 82, Laws 1967 read:
"Severability. If a part of this act shall
be declared to be invalid, all valid parts

that are severable from the invalid parts
remain in effect. If a part of this act is
declared to be invalid in one or more of
its applications, the part remains in effect
in all valid applications that are sever-
able from the invalid applications."

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CHAPTER 51—LOCAL GOVERNMENT STUDY COMMISSIONS

16-5101. Declaration of policy and purpose. It is the purpose of this act to partially implement article XI, sections 3, 5, 6 and 9 of the 1972 Constitution.

History: En. 16-5101 by Sec. 1, Ch. 222, L. 1974.

16-5102. Definitions. As used in this act:

(1) "Study commission" means a local government study commission established pursuant to this act.

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(2) "Unit of local government" means a county, incorporated city or incorporated town.

(3) "Study commissioners" means the elected or appointed members of the local government study commissions.

(4) "Structure" means the entire governmental organization through which a local government unit carries out its duties, functions and responsibilities.

(5) "Form" means a specific and formal governmental organization authorized as an optional form of government by law or a specific and formal governmental organization provided in a charter.

History: En. 16-5102 by Sec. 2, Ch. 222, L. 1974.

16-5103. Establishment of study commissions. (1) Each board of county commissioners shall by resolution adopted prior to April 15, 1974 authorize a county study commission and shall determine by such resolution the number of study commissioners. The number of study commissioners shall be an odd number not less than three (3).

(2) Each municipal council or commission shall by resolution adopted prior to April 15, 1974 authorize a municipal study commission and shall determine by such resolution the number of study commissioners. The number of study commissioners shall be an odd number not less than three (3).

(3) Resolutions authorizing study commissions and determining their size shall not be the subject of referenda or initiative petitions.

(4) Study commissioners shall be elected as provided in section 7 [16-5107]. No person shall serve on more than one (1) study commission.

History: En. 16-5103 by Sec. 3, Ch. 222, L. 1974.

16-5104. Purpose of study commission. It shall be the purpose of the study commission to study the form and power of government and existing procedures for delivery of local government services and compare them with other forms available under the laws of the state of Montana.

History: En. 16-5104 by Sec. 4, Ch. 222, L. 1974.

16-5105. Power of the study commission. The study commission shall have the power to review the structure and power of each unit of local government represented on the study commission and shall submit one (1) alternative form of government to the qualified electors of each unit of government or combination of units of government. The study commission may submit an optional or alternative form of government provided by law or may draft a self-government charter; however, no such optional or alternative form or charter shall be submitted to the qualified electors until a specific procedure for such submission by the study commission is provided by subsequent law.

History: En. 16-5105 by Sec. 5, Ch. 222, L. 1974.

16-5106. Co-operation of study commissions. (1) Any two (2) or more study commissions may co-operate in the conduct of their studies.

A majority vote by each of the affected study commissions is required for a co-operative study.

(2) Co-operative studies do not preclude each study commission from making a separate report and recommendations.

History: En. 16-5106 by Sec. 6, Ch. 222, L. 1974.

16-5107. Election of members. Study commissioners shall be elected in the following manner:

(1) Study commissioners shall be elected at the general election, Tuesday, November 5, 1974. There shall be placed on the ballot the names of study commission candidates who shall have been nominated in the manner provided in this section. Candidates shall be listed without party or other designation or slogan, except that candidates for county study commissions shall be listed according to position designation as provided in subsection (2) of this section. The secretary of state shall prescribe the ballot form for study commissions.

(2) Resolutions establishing study commissions shall specify the number of study commissioners to be elected. Municipal study commissioners shall be qualified electors residing within the municipality and shall be elected at large by electors of the municipality. County study commissioners shall be qualified electors and shall be elected at large by electors of the county in the following manner:

(a) three (3) study commission positions shall be filled by persons one of whom resides in each of the three (3) county commissioner districts. The positions shall be designated by district numbers one (1), two (2), and three (3) and the certificate of nomination for each candidate for such positions shall specify the position designation.

(b) if the resolution creating the study commission calls for more than three (3) members, the additional members shall be residents of the county. The additional positions shall be designated "at large positions" and the certificate of nomination for each candidate for such positions shall specify the position designation.

(3) Nominations for study commissioners shall be made by executing a certificate of nomination.

(4) The certificate shall be in writing and contain:

(a) the name of a candidate for the office to be filled;

(b) his residence address, his occupation, and his business address;
and

(c) the position designation if the candidate is running for a county study commission position.

(5) For municipal study commissions, the certificate shall be signed by qualified electors residing within the municipality. For county study commissions, the certificate shall be signed by qualified electors residing within the county. Each elector shall add to his signature his place of residence.

(6) For municipal study commissions, the number of signatures shall total at least one hundred (100) or be at least one per cent (1%) of the

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qualified electors residing within the municipality for the 1973 municipal election, whichever is less. For county study commissions, the number of signatures shall total at least one hundred (100) or be at least one per cent (1%) of the qualified electors residing within the county for the 1972 general election, whichever is less.

(7) The certificate of nomination shall be filed on or before August 1, 1974. No filing fee is required. The county clerk and recorder, in the case of county study commission candidates, and the municipal clerk, in the case of municipal study commission candidates, shall examine the source and certify to the sufficiency of the signatures thereon.

(8) Each nomination certificate shall, before it may be filed with the county clerk or municipal clerk, contain an acceptance of such nomination in writing, signed by the candidate therein nominated, upon or annexed to such certificate, or if the same person be named in more than one certificate, upon or annexed to one (1) of such certificates. Such acceptance shall certify that the nominee possesses the qualifications prescribed by this act for the office designated in the certificate, that he consents to stand as a candidate at the election and that, if elected, he agrees to take office and serve.

(9) Each nominating certificate shall be verified by an oath or affirmation of one (1) or more of the signers thereof, taken and subscribed before a person qualified under the laws of Montana to administer an oath, to the effect that the petition was signed by each of the signers thereof in his proper handwriting, that the signers, to the best knowledge and belief of the affiant, possess the qualifications prescribed by section 7 [16-5107], subsection (5) of this act and that the certificate is prepared and filed in good faith for the sole purpose of endorsing the person named therein for election as stated in the petition.

(10) Votes cast for municipal and county study commissioners shall be counted, canvassed and returned by county election officials. Except as otherwise provided in this act, each election conducted under this act shall be governed by the election laws of the state of Montana. Any separate ballots or election supplies required for election of municipal study commissioners shall be furnished or paid for by the municipality.

(11) If the number of municipal study commissioners elected at the November 5, 1974 election is not equal to the number of commissioners required to be selected, the mayor with the confirmation of the municipal council or commission shall appoint, on or before November 16, 1974, the additional study commissioner or commissioners. The mayor with the confirmation of the municipal council or commission shall fill any subsequent vacancy on the municipal study commission by appointing a new commissioner. If the number of county study commissioners elected at the November 5, 1974 election is not equal to the number of commissioners required to be selected, the board of county commissioners shall appoint, on or before November 16, 1974, the additional study commissioner or commissioners. The board of county commissioners shall fill any subsequent vacancy on the county study commission by appointing a new commissioner. However, any municipal or county study commissioner appointed under this subsec-

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person shall possess the qualifications prescribed by this act for the position to which he is being appointed, and no elected official of the local government unit may be appointed.

History: En. 16-5107 by Sec. 7, Ch. 222, L. 1974.

16-5108. Term of study commission. All study commissions shall terminate June 30, 1977.

History: En. 16-5108 by Sec. 8, Ch. 222, L. 1974.

16-5109. Organization of the study commission. (1) Not later than ten (10) days after all study commissioners are elected or appointed the study commissioners shall meet and organize at a time which shall be set by the board of county commissioners, for the county study commission, or the mayor, for the municipal study commission.

(2) At the first meeting of the study commission, the study commission may elect a temporary chairperson who will serve until a permanent chairperson is selected.

(3) Meetings of the study commission shall be held upon the call of the chairperson, vice-chairperson in the absence or inability of the chairperson, or a majority of the study commissioners. The chairperson shall give due notice of the time and place of the meetings of the study commission.

(4) The study commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the study commission during regular office hours.

(5) A majority of the study commissioners shall constitute a quorum for the transaction of business, but no recommendation of a study commission shall have any legal effect unless adopted by a majority of the whole number of study commissioners.

(6) The study commission shall have the power to adopt rules for its own organization and procedure.

History: En. 16-5109 by Sec. 9, Ch. 222, L. 1974.

16-5110. Compensation of study commissioners. Study commissioners shall receive no compensation other than for actual and necessary expenses incurred in their official capacity.

History: En. 16-5110 by Sec. 10, Ch. 222, L. 1974.

16-5111. Open meetings—hearings. All meetings of the study commission shall be open to the public. The study commission shall hold public hearings and community forums and may use other suitable means to disseminate information and stimulate public discussion of its purposes, progress, conclusions, and recommendations.

History: En. 16-5111 by Sec. 11, Ch. 222, L. 1974.

16-5112. Administrative powers. A study commission shall have the following administrative powers. (1) The study commission may employ

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and fix the compensation and duties of necessary staff. State, municipal, and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted they shall receive no other compensation, except mileage and per diem from the study commission.

(2) The study commission may establish advisory boards and committees, including on them persons who are not study commissioners.

(3) The study commission may retain consultants.

(4) The study commission may contract and co-operate with other agencies, public or private, as it considers necessary for the rendition and affording of such services, facilities, studies, and reports to the study commission as will best assist it to carry out the purposes for which the study commission was established. Upon request of the chairperson of the study commission, state agencies, counties, and other units of local government, and the officers and employees thereof, shall furnish the commission such information as may be necessary for carrying out its function which may be available to or procurable by such agencies or units of government.

(5) The study commission may do any and all other things as are consistent with and reasonably required to perform its function under this act.

History: En. 16-5112 by Sec. 12, Ch. 222, L. 1974.

16-5113. Finances. (1) The governing body of each local government unit shall prepare a budget to cover the expenses of the study commission for the period it is in operation during fiscal year 1975.

(2) The study commission shall prepare a budget for fiscal year 1976 and a budget for fiscal year 1977 and submit them to the local government unit's governing body for approval.

(3) Each local government unit shall accept and transfer to its study commission all funds appropriated from the state general fund for the support of the study commission.

(4) Each local government unit shall supplement the state funds available in fiscal years 1975, 1976, and 1977 by appropriating funds, providing in-kind services, or a combination of both, in a total amount not less than the available state money for each fiscal year. For that purpose, each local government unit may assess and levy, in addition to all other levies permitted by law, a special tax on each dollar of taxable valuation of the taxable property of the unit of local government. This tax may be levied in each of the fiscal years 1975, 1976, and 1977 and may be levied by a municipality in addition to the all-purpose levy provided in sections 84-4701.1, 84-4701.2, 84-4701.3, 84-4701.4, and 84-4701.5, R. C. M. 1947.

(5) All moneys received by the study commission shall be deposited with the county or municipal treasurer. The treasurer is authorized to disburse budgeted funds of the study commission on its order. Unexpended funds of the study commission shall not revert to the general fund of the

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local government unit at the end of the fiscal year but shall carry over to the study commission's budget for the following fiscal year. Upon termination of the study commission, unexpended funds shall revert to the general fund of the local government unit.

History: En. 16-5113 by Sec. 13, Ch. 222, L. 1974.

16-5114. Prohibition on other proceedings. From April 15, 1974 until December 31, 1976 no other proceedings other than those commenced by a study commission for the adoption of any charter or form of government available under state law may be commenced.

History: En. 16-5114 by Sec. 14, Ch. 222, L. 1974.

16-5115. Severability clause. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

History: En. 16-5115 by Sec. 15, Ch. 222, L. 1974.

16-5116. Establishment of commission. As authorized by article VI, section 7 of the Montana constitution, there is created a temporary commission on local government consisting of nine (9) members.

History: En. 16-5116 by Sec. 1, Ch. 221, L. 1974.

16-5117. Members of commission. (1) The commission shall consist of eight (8) members and a chairperson appointed by the governor. No more than five (5) members shall be of any one political party.

(2) Members of the commission shall be appointed for three (3) year terms. Knowledge of local government will be a consideration in appointment of members of the commission.

(3) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

History: En. 16-5117 by Sec. 2, Ch. 221, L. 1974.

16-5118. Purpose and responsibility of commission. (1) The commission shall make a detailed and thorough study of local government structure, powers, services, finance and state-local relations. The commission shall prepare a revised code of local government law based on its studies and may make other recommendations for the improvement of local government.

(2) The commission may consult with and assist local government study commissions.

(3) Written reports with substantive recommendations adopted by the commission, and recommendations regarding implementing legislation, shall be made available to the governor, the members of the legislature, and to units of local government no later than December 1, 1974, and December 1, 1975.

(4) The commission may prepare and publish other reports on local government as it deems desirable.

History: En. 16-5118 by Sec. 3, Ch. 221, L. 1974.

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16-5119. Commission organization and procedure. (1) The commission shall have the power to adopt rules for its own organization and procedure.

(2) The commission shall select from its membership any additional officers it considers necessary.

(3) The commission may employ and fix the compensation and duties of necessary staff.

(4) Commission members shall be reimbursed for actual and necessary expenses incurred as commission members and shall be paid compensation as provided by law for interim standing committees.

(5) A majority of the members of the commission shall constitute a quorum for the transaction of business, and no recommendation of the commission shall have any effect unless adopted by a majority of the whole number of the members of the commission.

(6) Open meetings—hearings. All meetings of the commission shall be open to the public. The commission shall hold public hearings and may use other suitable means to disseminate information and stimulate public discussion of its purposes, progress, conclusions, and recommendations.

(7) The chairperson shall schedule meetings of the commission as deemed necessary. The chairperson shall give due notice of the time and place of the meetings to members of the commission.

(8) The commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the commission during regular office hours.

(9) Upon request, state agencies and units of local government shall co-operate with the commission by furnishing assistance and data to the extent possible.

(10) State, municipal and county officers and employees, at the request of the commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the commission. If leave with pay is granted, they shall receive no other compensation, except mileage and per diem, from the commission.

(11) The commission may establish advisory boards and committees, including on them persons who are not members of the study commission.

(12) The commission may do any and all things as are consistent with and reasonably required to perform its function under this act.

History: En. 16-5119 by Sec. 4, Ch. 221, L. 1974.

16-5120. Commission finances. (1) The commission may expend appropriated funds.

(2) Appropriated funds may be used to match any federal or private funds available for conducting the study and planning authorized by this act.

(3) On behalf of and for the commission, the governor shall make application for any federal funds available for the study and planning

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authorized by this act, and he may enter into any contracts required for receipt of federal funds with the appropriate federal agency.

History: En. 16-5120 by Sec. 5, Ch. 221, L. 1974.

16-5121. Severability clause. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

History: En. 16-5121 by Sec. 6, Ch. 221, L. 1974.

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CHAPTER 37—PLANNING AND ECONOMIC DEVELOPMENT ACT

Section

- 82-3701. Short title.
82-3702. Declaration of necessity and public policy.
82-3703. Planning and economic development commission.
82-3704. Executive head of department—appointment—compensation.
82-3705. Functions of department.
82-3706. Contracts and agreements for projects and programs—co-operation with other agencies.
82-3707. Administrators of sections of department—appointment of personnel.
82-3709. Planning board abolished—records, property and moneys transferred.

82-3701. Short title. This act shall be known and may be cited as the "Montana Planning and Economic Development Act of 1967."

History: En. Sec. 1, Ch. 19, L. 1967.

Title of Act

An act creating a planning and economic development commission and a department

of state government to foster planning, growth and diversification of industry and commerce; abolishing the planning board; and repealing sections 89-301 through 89-309, R. C. M. 1947.

82-3702. Declaration of necessity and public policy. It is hereby declared to be a necessity and the public policy of the state of Montana to promote, stimulate and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor and natural resources of the state requires that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities, and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state and the attainment of a proper balance in the over-all economic base are all necessary in order to create additional employment opportunities, increase personal income and promote the general welfare of the people of this state. The planning and economic development commission and department hereinafter created shall be regarded as performing a governmental function in carrying out the provisions of this act.

History: En. Sec. 2, Ch. 19, L. 1967.

82-3703. Planning and economic development commission. There is hereby created a department of state government to be known as the "department of planning and economic development," of which the governing board shall be a commission designated as the "planning and development commission." The commission shall consist of seven (7) members, and the governor shall be an ex officio member thereof. The governor shall appoint a chairman of the commission as provided hereafter. The

other five (5) members of the commission shall be appointed by the governor, shall represent various community and economic interests, and shall be residents and qualified electors of the state. On or before the effective date of this act, the governor shall appoint one (1) member whose term of office shall expire on May 1, 1968, one (1) member whose term of office shall expire on May 1, 1969, one (1) member whose term of office shall expire on May 1, 1970, one (1) member whose term of office shall expire on May 1, 1971, and one (1) member whose term of office shall expire on May 1, 1972. Except appointments to fill unexpired terms, each appointment thereafter shall be for a period of five (5) years. Members of the commission may be removed by the governor, and any vacancy caused by death, removal, disqualification or resignation shall be filled by appointment as hereinabove provided.

The commission shall select from its membership a vice-chairman, a secretary, and such other officers as it may determine to be necessary. The commission shall adopt such rules and regulations for the discharge of its duties as it may from time to time deem necessary, and each member except the governor and the chairman of the commission shall receive the sum of fifteen dollars (\$15.00) per day for each day actually engaged in the performance of the duties of office, and shall be reimbursed for actual and necessary expenses incurred in the performance of the duties of office. The commission is empowered to exercise general supervision of the department, shall establish policy, and shall approve programs undertaken.

History: En. Sec. 3, Ch. 19, L. 1967.

Cross-References

Department and commission abolished and functions transferred, sec. 82A-902(2).

82-3704. Executive head of department—appointment—compensation. The executive head of the department is the chairman of the commission, who shall be appointed by the governor, with the consent of the senate, and shall hold office at the pleasure of the governor. The chairman of the commission shall receive such compensation as is fixed by the legislature.

History: En. Sec. 4, Ch. 19, L. 1967.

82-3705. Functions of department. The department shall serve as the agency of state government in developing the full potential of the state's human and natural resources. To this end the department shall perform the following functions:

- (A) State Planning.
 - (1) Develop and adopt a comprehensive plan for the physical development of the state of Montana.
 - (2) Make such economic and social studies as may be needed to accomplish the purposes of this act.
 - (3) Co-ordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana.
 - (4) Assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors which influence the develop-

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ment of new and existing economic enterprises, including taxes and the regulation of industry.

(5) Provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development which may be relieved by state action.

(6) Locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance, and make recommendations for protecting and preserving such sites.

(7) Apply for, accept and administer grants from the federal government or other public or private sources to accomplish the objectives of this act, and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states.

(8) Serve as the consultative, co-ordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services and technical aid, which may include land use, demographic and economic studies and surveys, and comprehensive plans.

(B) Community Development.

(1) Co-operate with and provide technical assistance to county, municipal, state and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly productive and co-ordinated development of the communities of the state.

(2) Assist the governor in co-ordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans.

(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal, state financial and technical assistance.

(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary. In carrying out such studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

(C) Recreational Development.

(1) Exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities.

(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminates the same to persons, firms or corporations with bona fide interest in constructing or maintaining recreational facilities open to the public.

(D) Economic Development.

(1) Provide co-ordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection therewith.

(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial and industrial enterprises within this state.

(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises.

(4) Aid communities interested in obtaining new business or expanding existing business.

(5) Study and promote means of expanding markets for Montana products.

(6) Encourage and co-ordinate public and private agencies or bodies in publicizing the facilities and attractions of the state.

History: En. Sec. 5, Ch. 19, L. 1967.

82-3706. Contracts and agreements for projects and programs—co-operation with other agencies. The department may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to effectuate its own research programs. It may initiate research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the university system. Other state agencies are directed to provide the department with such information as will assist it in carrying out the purposes of this act.

The department shall assist and co-operate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials, in carrying out the functions and duties of the department.

It may consult with private groups and individuals, and if the department deems it desirable, hold public hearings to obtain information for the purposes of carrying out this act.

History: En. Sec. 6, Ch. 19, L. 1967.

82-3707. Administrators of sections of department—appointment of personnel. Each division or section of the department may be under the management of an administrator, responsible to the chairman of the commission, and such administrators and all subordinate personnel of the department shall be appointed by the chairman of the commission, with the consent of the commission.

History: En. Sec. 7, Ch. 19, L. 1967.

82-3708. Repealed.

Repeal

Section 82-3708 (Sec. 8, Ch. 19, L. 1967), relating to the annual report of the planning and development commission, was

repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

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82-3709. Planning board abolished — records, property and moneys transferred. The state planning board is abolished. All records, property and moneys of the state planning board are transferred to the planning and economic development commission.

History: En. Sec. 9, Ch. 19, L. 1967. "Sections 89-301, 89-302, 89-303, 89-304, 89-305, 89-306, 89-307, 89-308, and 89-309, R. C. M. 1947 are repealed."
Repealing Clause
Section 10 of Ch. 19, Laws 1967 read

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CHAPTER 9—DEPARTMENT OF INTERGOVERNMENTAL RELATIONS

Section

- 82A-901. Department of intergovernmental relations—creation—head.
- 82A-902. Agencies abolished—functions transferred to department.
- 82A-903. Additional functions transferred to department.
- 82A-904. County printing commission—continued—transfer—renamed board of county printing—composition.
- 82A-905. State aeronautics commission—continued—renamed board of aeronautics—transfer—functions—designation.
- 82A-906. Governor's highway traffic safety task force abolished.

82A-901. Department of intergovernmental relations—creation—head. There is created a department of intergovernmental relations. The department head is a director of intergovernmental relations appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-901 by Sec. 1, Ch. 272,
L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 4-72, dated Aug. 30, 1972, effective Sept. 1, 1972.

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82A-901.1. Functions of department. The department and its units are responsible for administering laws pertaining to relationships between the state and local and federal governments, including, but not limited to, laws pertaining to:

- (1) Aeronautics (Title 1, chapters 1 to 9);
- (2) Highway traffic safety (Title 32, chapter 46);
- (3) Indian affairs (Title 82, chapter 27);
- (4) Planning and economic development (Title 82, chapter 37);
- (5) Examination of political subdivisions (Title 82, chapter 43);
- (6) Economic opportunity and poverty relief (Title 71, chapter 16);
- (7) County printing (Title 16, chapter 12).

History: En. 82A-901.1 by Sec. 102, Ch. 348, L. 1974.

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CHAPTER 45—DEPARTMENT OF INTERGOVERNMENTAL
RELATIONS—EXAMINATION DUTIES

82-4501. Definition. Unless the context requires otherwise, in this chapter "department" means the department of intergovernmental relations provided for in Title 82A, chapter 9.

History: En. 82-4501 by Sec. 88, Ch. 348, L. 1974.

82-4502. Examination duties of department. The department shall annually examine the books and accounts of all:

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82-4504

(1) County clerks, county auditors, county treasurers, district court clerks, sheriffs, public administrators, boards of county commissioners, and other county and municipal officers and boards;

(2) Incorporated cities and towns;

(3) School districts of the first and second class and third class districts maintaining a high school;

(4) Irrigation districts;

(5) Conservancy districts;

(6) Fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy;

(7) Fire department relief associations.

History: En. 82-4502 by Sec. 89, Ch. 348, L. 1974.

82-4503. Fees for examination. The fees for the examinations provided for in section 82-4502 are:

(1) For the examination of county clerks, county auditors, county treasurers, district court clerks, sheriffs, public administrators, boards of county commissioners, all other county and municipal officers and boards, and incorporated cities and towns, eighty dollars (\$80) a day for each person engaged in the examination, to be paid to the state treasurer and credited to the state general fund;

(2) For the examination of school districts, irrigation districts, and conservancy districts, seventy dollars (\$70) a day for each person engaged in the examination, to be paid to the state treasurer and credited to the state general fund;

(3) For the examination of fire districts and volunteer fire departments, seven dollars and fifty cents (\$7.50) an hour for each person engaged in the examination, to be paid to the state treasurer and credited to the state general fund;

(4) For the examination of fire department relief associations, on the basis of the funds of the association:

(a) If the fund is more than one thousand dollars (\$1,000) and less than five thousand dollars (\$5,000), ten dollars (\$10);

(b) If the fund is from five thousand dollars (\$5,000) to ten thousand dollars (\$10,000), twenty-five dollars (\$25);

(c) If the fund is more than ten thousand dollars (\$10,000), thirty-five dollars (\$35). Fees for the examination of fire department relief associations shall be paid to the state treasurer before July 1 and credited to the state general fund.

History: En. 82-4503 by Sec. 90, Ch. 348, L. 1974.

82-4504. Special examinations. In addition to the annual examinations required by section 82-4502, the department may at any time conduct a special examination of the books and accounts of a county, city, town, school district, irrigation district, high school, or other county or municipal office, board, or commission which has the control, management, collection, or disbursement of public money. The fee for a special examination is

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eighty dollars (\$80) a day for each person engaged in the examination and shall be paid to the state treasurer for credit to the state general fund.

History: En. 82-4504 by Sec. 91, Ch. 348, L. 1974.

82-4505. County, city, and town reports—filing with public officers—violations. (1) Within sixty (60) days after the examination of a county, city, or town, the department must make a report of the examination to the board of county commissioners, the city or town council, and the county, city, or town attorney. If a violation of law or nonperformance of duty is found on the part of an officer or board, the officer or board must be proceeded against by the attorney general, or county, city, or town attorney as provided by law.

(2) The county attorneys and the attorneys of the cities and towns shall report to the department, within thirty (30) days after receiving from the department the report of an examination of a county, city, or town, the proceedings instituted or to be instituted relating to violations of law and nonperformance of duty.

(3) If a county or city attorney refuses or neglects to notify the department within thirty (30) days after receiving the report of an examination of a county, city, or town, as to the proceedings he has instituted or is about to institute against an officer for violations of law or nonperformance of duty, as evidenced by matters of record, and as set forth in the department's report, the department may withhold the salary of the county or city attorney by filing notice with the proper officials, until a satisfactory explanation has been made to the department. If the county or city attorney fails or refuses to prosecute the case, the department may employ an attorney to prosecute the case at the expense of the county, city, or town.

History: En. 82-4505 by Sec. 92, Ch. 348, L. 1974.

82-4506. School district, fire district, and volunteer fire department reports—filing with public officers. (1) A copy of the department's report of its examination of a school district shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district. A citizen of the state may inspect, copy, and publish any of the facts contained in the report.

(2) A copy of the department's report of its examination of a fire district or volunteer fire department shall be filed with the clerk and recorder of the county in which the fire district or fire department is located.

History: En. 82-4506 by Sec. 93, Ch. 348, L. 1974.

82-4507. Accounting methods. The department shall prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to counties, cities, towns, and school districts, and shall establish in those offices general methods and details of accounting. County, city, town, and school district officers shall conform with the standards prescribed by the department.

History: En. 82-4507 by Sec. 94, Ch. 348, L. 1974.

82-4508. Publication of department's report to counties—entering in commissioners' minutes. Upon the receipt of the department's report covering the examination of the affairs of a county, the board of county commissioners of that county shall have the report entered and made a part of the minutes of the next regular meeting of the board. However, the report shall not be published by the board of county commissioners as a part of the minutes of its proceedings. The department shall, at the time the report is forwarded to the county commissioners, send a copy to the official newspaper of the county for publication. The report shall be published once in the official newspaper immediately, and is a charge against the county at the rate provided for by contract for printing proceedings of the county commissioners.

History: En. 82-4508 by Sec. 95, Ch. 343, L. 1974.

82-4509. Duty of officers to aid in examination. (1) The officers and employees of all counties, cities, and other local governments subject to examination by the department shall afford all reasonable facilities for the department's examination and shall furnish information to the department, under oath, in a manner prescribed by the department.

(2) An officer or person violating this section is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six (6) months, or by fine not exceeding five hundred dollars (\$500), or both.

History: En. 82-4509 by Sec. 96, Ch. 348, L. 1974.

82-4510. Power to examine books and papers. The department may examine any books, papers, accounts, and documents in the office or possession of a county, city, or local government referred to in this chapter, and may send for persons or papers and examine under oath any person concerning them.

History: En. 82-4510 by Sec. 97, Ch. 348, L. 1974.

82-4511. Failure of county officers to transmit statements to department—penalty. (1) If a county clerk fails to send to the department a copy of any quarterly report required by the department, within ten (10) days after the end of a quarter, or an annual financial statement of the county within forty (40) days after the end of the fiscal year, then he shall forfeit to the county one hundred dollars (\$100) to be deducted from his salary by the board of county commissioners of the county on notice of the failure from the department.

(2) If an officer refuses or neglects to comply with a lawful regulation prescribed by the department under authority of section 82-4507, or to submit a required report, the salary of that report officer shall, on request of the department to the proper official, be withheld until the officer obeys, and the department certifies approval to the disbursing official.

History: En. 82-4511 by Sec. 98, Ch. 348, L. 1974.

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82-4512

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82-4512. Access to accounts of public officers—actions to compel. (1) The department may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts it is examining under law.

(2) If a county, city, town, or school district officer refuses to accord the department access during an examination of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers, or records of his office, or if the department, after counting the cash and verifying the bank accounts of that officer, finds that a shortage exists in the accounts of that officer, the department shall immediately file a verified preliminary report showing the refusal of that officer or the existence of the shortage, and the amount or approximate amount of the shortage, with the board of county commissioners if the officer is a county or school district officer, and with the city or town council if the officer is a city or town officer. Upon the filing of the statement, the officer shall immediately be suspended from the duties and emoluments of his office, and the board of county commissioners or the city or town council shall appoint some qualified person to the office, pending completion of the examination.

(3) Upon the completion of the audit or examination of the accounts of the officer by the department, if a shortage existed in the accounts of the officer on the date of the commencement of the examination, the department shall file with the board of county commissioners or with the city or town council a verified final report of the examination or audit, showing the shortage. The right of the officer to the office is then forfeited, and the office becomes vacant as of the date of the suspension of the officer. The person appointed to the office upon the suspension of the officer shall hold the office until the election and qualification of his successor, as provided by law.

(4) An officer whose right to office has been forfeited may, within ten (10) days after the filing of the department's final report or audit, begin in the district court of the proper judicial district a proceeding in quo warranto to test the right of his successor to hold the office, and to test the accuracy of the final report and audit of the department.

History: En. 82-4512 by Sec. 99, Ch. 348, L. 1974.

82-4513. Laws applicable to examinations. All laws pertaining to examination of the books and accounts of county officers also apply to examination of the books and accounts of incorporated cities and towns and school districts of the first and second class.

History: En. 82-4513 by Sec. 100, Ch. 348, L. 1974.

82-4514. Entering department's report in minutes of city or town—publication. Upon receipt of the department's report covering the examination of the affairs of an incorporated city or town, the mayor and the members of the city council or city commission shall enter the report in the minutes of the next regular meeting. The department shall, at the time the report is forwarded to the city or town officials, and for cities and towns with more than one thousand (1,000) residents send a copy to a newspaper of general circulation for publication. The department shall, at the time the

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report of examination is forwarded to the city or town officials in cities or towns with one thousand (1,000) or less residents, send a copy of its general comments section to the official newspaper of the city or town for publication. The report shall immediately be published in one issue of that newspaper. The city or town shall pay for publication at a rate to be agreed on but not to exceed that charged boards of county commissioners for printing the reports of the department.

History: En. 82-4514 by Sec. 101, Ch. 348, L. 1974.

CHAPTER 38

CITY OR CITY-COUNTY PLANNING BOARDS

- Section 11-3801. City planning boards or city-county planning boards authorized—purpose of act.
- 11-3802. Existence and actions of existing boards.
- 11-3803. Definitions.
- 11-3804. City planning board.
- 11-3805. Intention of city to create planning board—county to decide whether to create city-county board or permit city board.
- 11-3806. Member of council to serve on city planning board—term—vacancies.
- 11-3807. Appointments—certification.
- 11-3808. Citizen members—qualifications.
- 11-3809. Repealed.
- 11-3810. City-county planning boards—members—term of officer members and citizen members.
- 11-3811. Vacancies.
- 11-3812. Citizen members of city-county board—qualifications.
- 11-3813. Removal of citizen appointee.
- 11-3814. County representative for city planning board.
- 11-3815. Representation of additional cities, towns, or county on existing boards.
- 11-3816. Meetings.
- 11-3817. Special meetings.
- 11-3818. Quorum—official action.
- 11-3819. Members not to receive salary.
- 11-3820. Expenses while attending conferences in another city, county, or state.
- 11-3821. President and vice-president.
- 11-3822. Secretary—contracts for services.
- 11-3823. Offices.
- 11-3824. Powers and duties.
- 11-3825. Funds for operation—tax levy authority.
- 11-3826. Authority to expend money.
- 11-3827. Power to accept and use gifts and donations—special nonreverting fund—federal and state aid.
- 11-3828. Master plan—policies.
- 11-3829. Departments and officials to supply information and documents requested in connection with preparation of master plan.
- 11-3830. Jurisdictional area.
- 11-3830.1. Planning projects outside jurisdictional area—broad construction.
- 11-3831. Master plan—contents.
- 11-3832. Repealed.
- 11-3833. Notice of hearing prior to adoption of master plan.
- 11-3834. Resolution adopting master plan and recommending ordinance.
- 11-3835 to 11-3839. Repealed.
- 11-3840. Adoption of master plan—policy and pattern of development.
- 11-3841. Repealed.
- 11-3842. Plats of subdivisions—approval by planning board.
- 11-3843. Application for approval of plat.
- 11-3844. Determination of whether application for approval should be granted.
- 11-3845. Regulations governing procedure for application or approval of plats.
- 11-3846. Approval or disapproval of application for plat.
- 11-3847. Fees.
- 11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council.
- 11-3849. Repealed.
- 11-3850. Repealed.
- 11-3851. Appeals.
- 11-3852. Repealed.
- 11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources.
- 11-3854. Repealed.
- 11-3855. Validation of prior zoning ordinances, rules and regulations.
- 11-3856 to 11-3858. Repealed.

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CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

- Section
- 11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act.
 - 11-3803. Definitions.
 - 11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members.
 - 11-3811. Vacancies.
 - 11-3812. Citizen members of county planning board and city-county planning board—qualifications.
 - 11-3815. Representation of additional cities, towns, or county on existing boards.
 - 11-3825. Funds for operation—tax levy authority.
 - 11-3830. Jurisdictional area.
 - 11-3830.2. Jurisdictional area—county planning board.
 - 11-3831. Master plan—contents.
 - 11-3842. Plats of subdivisions—approval by planning board.
 - 11-3842.1. Advice of planning board required.
 - 11-3859. Citation of subdivision act.
 - 11-3860. Statement of purpose.
 - 11-3861. Definitions.
 - 11-3862. Surveys required—exceptions—standards for monumentation.
 - 11-3863. Enforcement by governmental subdivisions—adoption of regulations—public hearing.
 - 11-3864. Dedication of portions of subdivisions to the public—cash donations in lieu of dedication—waivers.
 - 11-3865. Required abstract or title insurance for dedicated lands.
 - 11-3866. Submission of subdivision plat to governing body—notice—hearing—approval—disapproval.
 - 11-3867. Filing of subdivision plat with county recorder—review of subdivision plats by land surveyor.
 - 11-3868. Fees.
 - 11-3869. Covenants run with the land.
 - 11-3870. Vacation of plat—easements of utilities.
 - 11-3871. Donations or grants to public considered a grant to donee.
 - 11-3872. Certificate of survey—when required—contents—form.
 - 11-3873. Index of plats to be kept by county clerk and recorder.
 - 11-3874. Correction of survey—at governing body's expense.
 - 11-3875. Administration of oaths by registered land surveyor.
 - 11-3876. Violation—misdemeanor.

11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county, or any combination thereof, may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials.

Before a county planning board may be created, the board of county commissioners shall, by resolution, give public notice of their intent to create such planning board and of a public hearing thereon, by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of hearing. A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than sixty (60) days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971.

Amendments

The 1971 amendment substituted that portion of the first sentence of the first

paragraph preceding "may create" for "The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly"; and added the third paragraph.

11-3802. Existence and actions of existing boards. Upon the taking effect of this act, a planning board heretofore established shall continue to operate as though authorized under the terms of the present act. All actions lawfully taken under prior acts or ordinances are hereby validated and continued in effect until amended or repealed by action taken under the authority of this act.

History: En. Sec. 2, Ch. 246, L. 1957.

11-3803. Definitions. As used in this act:

1. "City" includes incorporated cities and towns.
2. "City council" means the chief legislative body of a city or incorporated town.

3. "Planning board" means a city planning board or a joint city-county planning board.

4. "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, or sanitation, of recreation, and other related matters. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.

5. "Public place" means any tract owned by the state or its subdivisions.

6. "Mayor" means mayor of a city.

7. "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

8. "Units of government" means any federal, state, regional, county, city or town.

9. "Utility" means any facility used in rendering service which the public has a right to demand.

10. "Person" means individual firm, or corporation.

11. "Governing body or governing bodies" means the governing body of any governmental unit represented on a planning board.

12. "Plat" means a subdivision of land into lots, streets and areas, marked upon the earth and represented on paper; and includes re-plats or amended plats.

History: En. Sec. 3, Ch. 246, L. 1957;
amd. Sec. 2, Ch. 247, L. 1963.

11-3804. City planning board. A city planning board shall consist of not less than seven (7) members to be appointed as follows:

a. One (1) member to be appointed by the city council from its membership;

b. One (1) member to be appointed by the city council who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

c. One (1) member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

d. Four (4) citizen members to be appointed by the mayor, two (2) of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this act and two (2) of whom shall be resident freeholders within the city limits. Such citizen members shall hold no other office in the city government.

History: En. Sec. 4, Ch. 246, L. 1957;
amd. Sec. 1, Ch. 271, L. 1959.

11-3805. Intention of city to create planning board—county to decide whether to create city-county board or permit city board. Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing, the county commissioners of the county in which the city is located of their intention to form a city planning board.

The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and all notify in writing the city council of its election within thirty (30) days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect the planning board to be formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957.

11-3806. Member of council to serve on city planning board—term—vacancies. As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed, unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957.

11-3807. Appointments—certification. The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: En. Sec. 7, Ch. 246, L. 1957.

11-3808. Citizen members—qualifications. The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city and shall hold no other office in the city government and shall be resident freeholders of such city or jurisdictional area as defined in section 11-3830, R. C. M. 1947.

History: En. Sec. 8, Ch. 246, L. 1957;
amd. Sec. 3, Ch. 247, L. 1963.

11-3809. Repealed—Chapter 271, Laws of 1959.

Repeal

of the board, was repealed by Sec. 8, Ch. 271, Laws 1959.

This section (Sec. 9, Ch. 246, L. 1957), relating to the terms of citizen members

11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members. 1. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members who reside outside the city limits to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. Two (2) official members to be appointed by the city council who may in the discretion of the city council be employed by or hold public office in the city.

Two (2) citizen members to be appointed by the mayor of the city.

d. Two (2) citizen members to be appointed by the board of county commissioners. The two (2) members shall reside outside the city limits but within the jurisdictional area of the planning board.

e. The ninth member shall be selected by the eight (8) officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

1973 SUPPLEMENT

1973 SUPPLEMENT

2. County planning boards shall consist of not less than five (5) members appointed by the board of county commissioners. At least one (1) member of any county planning board existing at or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in section 76-105 or a state co-operative grazing district, if officers of either reside in said county.

In the event that any city or town subsequently becomes represented on the county planning board pursuant to section 11-3815, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

3. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 217, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973.

Amendments

The 1971 amendment inserted subsec-

tion 2; and redesignated former subsection 2 as subsection 3.

The 1973 amendment inserted "who reside outside the city limits" in subdivision 1a; and added the second sentence to the first paragraph in subsection 2.

11-3811. Vacancies. Vacancies occurring on the board of official members, and by death or resignation of citizen members, shall be filled by the governing bodies having appointed them for the unexpired term.

Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor. Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners. In the event more than one (1) city is represented on a board the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971.

ty planning" in the first sentence of the second paragraph; and inserted the second sentence of the second paragraph.

Amendments

The 1971 amendment inserted "city-county

11-3812. Citizen members of county planning board and city-county planning board—Qualifications. The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted the first sentence.

11-3813. Removal of citizen appointee. Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963.

11-3814. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within forty-five (45) days designate a representative of the county, which representative may be a member of the board of county commissioners or an officeholder or employee of the county, to the mayor of the

History: En. Sec. 14, Ch. 246, L. 1957.

The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

History: En. Sec. 15, Ch. 246, L. 1957;
amd. Sec. 6, Ch. 273, L. 1971.

as the jurisdictional area" and "and planning" in the second paragraph; added the third paragraph; and made a minor change in ph useology.

The 1971 amendment inserted "as well

History: En. Sec. 16, Ch. 246, L. 1957.

Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting, or if all members are present at the special meeting.

11-3818. Quorum—official action. A majority of members shall constitute a quorum; no action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

11-3819.- Members not to receive salary. The members of planning boards shall receive no salary for serving on the planning board, but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

11-3820. Expenses while attending conferences in another city, county, or state. When the planning board determines that it is necessary for members or employees to attend, in another city, county or state a regional or national conference or interview dealing with planning or regional development, the board shall determine the actual expenses of the

attending members or employee provided the amount has been made available in the board's appropriation.

History: En. Sec. 20, Ch. 246, L. 1957;
amd. Sec. 7, Ch. 217, L. 1963.

11-3821. President and vice-president. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: En. Sec. 21, Ch. 246, L. 1957.

11-3822. Secretary—contracts for services. The board may appoint and prescribe the duties and fix the compensation of a secretary, and such employees as are necessary for the discharge of the duties and responsibilities of the board.

The board may make contracts for special or temporary services and any professional services.

History: En. Sec. 22, Ch. 246, L. 1957.

11-3823. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: En. Sec. 23, Ch. 246, L. 1957.

11-3824. Powers and duties. To effectuate the purpose of this act, the board shall have the power and duty to:

1. Exercise general supervision of and make regulations for the administration of the affairs of the board.

2. Prescribe uniform rules pertaining to investigations and hearings.

3. Supervise the fiscal affairs and responsibilities of the board.

4. Prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board, and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

5. Keep an accurate and complete record of all departmental proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the board.

6. Make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction.

7. Prepare, publish, and distribute reports; proposed ordinances and proposed resolutions and other material relating to the activities authorized under this act.

8. Prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to

the provisions made therefor by the governing bodies represented upon the board.

History: En. Sec. 24, Ch. 246, L. 1957;
amd. Sec. 8, Ch. 247, L. 1963.

Collateral References

Injunction ~~§~~ 89; Municipal Corporations ~~§~~ 601 (1).

43 C.J.S. Injunctions § 123; 62 C.J.S. Municipal Corporations § 226 (1).

DECISIONS UNDER FORMER LAW

Constitutionality

The provisions of former sections 11-3852 and 11-3854 authorizing county commissioners to exercise building and zoning regulatory powers were invalid as an un-

constitutional attempt to delegate legislative powers to counties in violation of section 1, article IV of the Montana constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1023.

11-3825. Funds for operation—tax levy authority. 1. After a city council has by ordinance, a board of county commissioners has, by ordinance and resolution, or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

2. When a planning board has been created by agreement of more than one (1) governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

3. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed two (2) mills for planning board purposes, under procedures set forth in Title 11, chapter 14, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

4. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional areas as established pursuant to section 11-3830, which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 16, chapter 19, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

5. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as

established pursuant to section 11-3830 or as modified pursuant to section 11-3830.2 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax not to exceed two (2) mills for planning board purposes under procedures set forth in Title 16, chapter 19, R.C.M. 1947.

6. The tax levy for planning board purposes shall be limited as follows: a city of the first class, as defined in section 11-201 of this code, may levy a tax not to exceed two (2) mills; a city of the second class may levy a tax not to exceed four (4) mills; a city of the third class may levy a tax not to exceed six (6) mills and a town may levy a tax not to exceed six (6) mills.

A county of the first class, as defined in section 16-2419 of this code, may levy a tax not to exceed two (2) mills; a county of the second class may levy a tax not to exceed three (3) mills; a county of the third class may levy a tax not to exceed four (4) mills; a county of the fourth class may levy a tax not to exceed five (5) mills and counties of the fifth, sixth and seventh classes may levy a tax not to exceed six (6) mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "a board of county commissioners has, by ordinance and resolution" in subsection 1;

increased the maximum levy from one to two mills and added the proviso in subsection 3; deleted "not to exceed one (1) mill" after "a tax" and added the proviso in subsection 4; added subsections 5 and 6; and made a minor change in phraseology.

11-3826. Authority to expend money. The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this act.

History: En. Sec. 26, Ch. 246, L. 1957.

11-3827. Power to accept and use gifts and donations—special non-reverting fund—federal and state aid. A city, county or city-county planning board organized pursuant to the provisions of this title, is hereby empowered and given the right to accept, receive, take, hold, own and possess any gift, donation, grant, devise or bequest, or any property, real, personal or mixed, or any improved or unimproved park or playground, and utilize, hold, or dispose of the same for planning purposes, not inconsistent with the provisions of this act. Any moneys so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities of state or local government, or its agencies and instrumentalities of state or local government, or from civic sources and contract with respect thereto, and provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957;
amd. Sec. 1, Ch. 133, L. 1965.

11-3828. Master plan—policies. 1. To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

2. The planning board may also propose policies for:

- a. subdivision plats.
- b. the development of public ways, public places, public structures; and public and private utilities.
- c. the issuance of improvement location permits on platted and unplatted lands.
- d. the laying out and development of public ways and services to platted and unplatted lands.

3. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under section 11-2706, R. C. M. 1947.

4. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957;
amd. Sec. 10, Ch. 247, L. 1963.

11-3829. Departments and officials to supply information and documents requested in connection with preparation of master plan. Whenever the board undertakes the preparation of a master plan, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, such information, documents, and plans as have been prepared or upon the request of the board shall provide such information as relates to the board's activity.

History: En. Sec. 29, Ch. 246, L. 1957.

11-3830. Jurisdictional area. 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

The boundaries of the jurisdictional area can be extended further than four and one-half miles from the limits of the cities only upon petition signed by five per cent (5%) or more of the resident freeholders living in excess of four and one-half miles and not more than twelve miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits, and upon presentation of said petition to the board of county commissioners. Thereafter, the board of county commissioners must, by resolution, set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition, by publication of notice of time and place of hearing on said petition and resolution, said notice to be published in a newspaper published in the county not less than ten (10) nor more than twenty (20) days prior to the date of said hearing. Thereafter, the said boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners, if disapproved in writing, by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than twelve (12) miles beyond the limits of any city within the jurisdictional area.

2. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

3. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map showing the boundary lines so agreed upon and approved shall be filed as provided in this section, and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 217, L. 1963.

DECISIONS UNDER FORMER LAW

Constitutionality

The former provisions empowering city-county planning boards to develop and exercise complete discretion in developing master plans for contiguous unincorporated areas surrounding cities within a radius of twelve miles of such cities were

invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of section 1, article IV of the Montana constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

History: En. Sec. 30, Ch. 216, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969.

Amendments

The 1969 amendment substituted "area

involved" for "city" at the end of the first sentence; inserted the first three sentences of the second paragraph, and in the fourth sentence, formerly the second sentence of the first paragraph, substituted "twelve miles" for "four and one-half (4½) miles."

11-3830.1. Planning projects outside jurisdictional area—broad construction. Any city-county planning board organized pursuant to the provisions of Title 11, chapter 38, R. C. M. 1947, is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county, and outside of the jurisdictional area of said city-county planning board as defined in section 11-3830, R. C. M. 1947. Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

1973 SUPPLEMENT

1975

History: En. Sec. 1, Ch. 190, L. 1965.

Compiler's Note

Sections 11-3809, 11-3832, 11-3835 to 11-3839, 11-3841, 11-3849, 11-3850, 11-3852,

11-3854, 11-3856 to 11-3858, contained in the reference to Title 11, Chapter 38, referred to in this section, have been repealed. Sections 11-3809, 11-3841, 11-3849 and 11-3850 were repealed by Sec. 8, Ch.

11-3830.2. Jurisdictional area — county planning board. (1) The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830. Should any city or town become represented on the county planning board pursuant to section 11-3815, the jurisdictional area of the county planning board shall be extended to include those cities or towns.

(2) The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

1973 SUPPLEMENT

(3) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in this section and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(4) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies and a map showing the boundary lines so agreed upon shall be filed as provided in this section and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971.

Title of Act

An act providing for building restrictions and zoning and subdivision regula-

tions by cities, towns and counties; providing for boards of adjustment and the duties thereof; providing for city, county and city-county planning boards; providing definitions; providing qualifications for members of boards; providing for a

master plan and a jurisdictional area; providing for plats of subdivisions; providing for planning and zoning districts; amending sections 11-2702, 11-3801, 11-3810, 11-3811, 11-3812, 11-3815, 11-3825,

11-3842, 11-3843, 11-3844, 11-3846, 11-3847, 11-3848, 11-3851, R. C. M. 1947, and adding new section 11-3830.2, and amending sections 16-4101, 16-4702, 16-4703, 16-4705, R. C. M. 1947.

11-3831. Master plan—contents. The planning board shall prepare and propose a master plan for the jurisdictional area, which plan may include;

1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.

2. Maps, plats, charts, and descriptive material presenting basic information, locations, extent and character of any of the following:

- a. History, population, and physical site conditions;
- b. Land use, including the height, area, bulk, location and use of private and public structures and premises;
- c. Population densities;
- d. Community centers and neighborhood units;
- e. Blighted and slum areas;
- f. Streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;
- g. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;
- h. Flood control and prevention;
- i. Public and private utilities, including water, light, heat, communication, and other services;
- j. Transportation, including rail, bus, truck, air, and water transport, and their terminal facilities;
- k. Local mass transit, including motor and trolley bus, street, elevated or underground railways, and taxicabs;
- l. Parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;
- m. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;
- n. Education, including location and extent of schools, colleges, and universities;
- o. Land utilization, including areas for manufacturing, and industrial uses, concentration of wholesale, retail business, and other commercial uses, residential, and areas for mixed uses;
- p. Conservation of water, soil, agricultural, and mineral resources;
- q. Any other factors which are a part of the physical, economic, or social situation within the city or county.

3. Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in section 11-3801.

4. A long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up-to-date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds.

History: En. Sec. 31, Ch. 216, L. 1957;
• amd. Sec. 12, Ch. 247, L. 1963.

11-3832. Repealed—Chapter 247, Laws of 1963.

<p>Repeal</p> <p>This section (Sec. 32, Ch. 246, L. 1957), relating to amended or additional plans</p>	<p>for streets and highways, was repealed by Sec. 26, Ch. 247, Laws 1963.</p>
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11-3833. Notice of hearing prior to adoption of master plan. 1. Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

2. At least ten (10) days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957; and Sec. 13, Ch. 247, L. 1963.	References Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.
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11-3834. Resolution adopting master plan and recommending ordinance. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 31, Ch. 246, L. 1957;
amd. Sec. 14, Ch. 247, L. 1963.

11-3835 to 11-3839. Repealed—Chapter 247, Laws of 1963.

<p>Repeal</p> <p>These sections (Secs. 35 to 39, Ch. 246, L. 1957), relating to adoption of master plans by planning boards, action thereon</p>	<p>by governing bodies, and amendments subsequent to adoption, were repealed by Sec. 26, Ch. 247, Laws 1963.</p>
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11-3840. Adoption of master plan—policy and pattern of development. The governing bodies shall adopt, revise or reject such proposed plan or any of its parts. After adoption of the master plan the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

1. Authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

2. Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

3. Adoption of subdivision controls;

4. Adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957;
am. Sec. 15, Ch. 247, L. 1963.

11-3341. Repealed—Chapter 271, Laws of 1959.

Repeal relating to the control over plots, was
This section (Sec. 41, Ch. 216, L. 1957), repealed by Sec. 8, Ch. 271, Laws 1959.

11-3842. Plats of subdivisions—approval by planning board. (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(3) Thereafter a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(4) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments, but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "or the

board of county commissioners may by resolution" in the first sentence of subsection (1); inserted subsection (3); redesignated former subsection (3) as subsection (4); and made minor changes in style.

1973 SUPPLEMENT

11-3842.1. Advice of planning board required. The governing body of any city, town or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to Title 11, chapter 38, R.C.M., 1947, shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971.

11-3843 to 11-3848. Repealed.

Repeal

Sections 11-3843 to 11-3848 (Secs. 43 to 48, Ch. 246, L. 1957; Secs. 17 to 22, Ch. 247, L. 1963; Secs. 10 to 14, Ch. 273, L.

1971), relating to approval, disapproval and recording of city plats, were repealed by Sec. 20, Ch. 500, Laws 1973. For new law see secs. 11-3859 to 11-3876.

1973 SUPPLEMENT

11-3849. Repealed—Chapter 271, Laws of 1959.

Repeal

This section (Sec. 49, Ch. 246, L. 1957), relating to the conformance of structures

to the master plan and ordinance, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3850. Repealed—Chapter 271, Laws of 1959.

Repeal

This section (Sec. 50, Ch. 246, L. 1957), relating to the issuance of improvement

location permits, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3851. Repealed.

Repeal

Section 11-3851 (Sec. 51, Ch. 246, L. 1957; Sec. 23, Ch. 247, L. 1963; Sec. 15, Ch. 273, L. 1971), relating to appeals

from the rejection of subdivision plats, was repealed by Sec. 20, Ch. 500, Laws 1973. For new law see secs. 11-3859 to 11-3876.

1973 SUPPLEMENT

11-3852. Repealed—Chapter 246, Laws of 1963.

Repeal

This section (Sec. 52, Ch. 246, L. 1957; Sec. 5, Ch. 271, L. 1959), granting zoning powers to city councils and boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources. Nothing in this act shall be deemed to authorize an ordinance, resolution, rule, or regulation which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959.

11-3854. Repealed—Chapter 246, Laws of 1963; Chapter 247, Laws of 1963.

Repeal

This section (Sec. 54, Ch. 246, L. 1957; Sec. 7, Ch. 271, L. 1959), granting zoning commission powers to planning boards, was repealed by Sec. 12, Ch. 246, Laws 1963, and by Sec. 26, Ch. 247, Laws 1963.

11-3855. Validation of prior zoning ordinances, rules and regulations. All zoning ordinances or resolutions and rules and regulations and all amendments, supplements, and changes thereto legally adopted under any prior enabling act and all actions taken under the authority of any such ordinances or resolutions, are hereby validated and continued in effect, until amended or repealed by action of the governing bodies taken under the authority of this act.

History: En. Sec. 55, Ch. 246, L. 1957; amd. Sec. 24, Ch. 247, L. 1963.

Saving Clause

Section 25 of Ch. 247, Laws 1963 read

"Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

11-3856 to 11-3858. Repealed—Chapter 247, Laws of 1963.

Repeal

These sections (Secs. 56 to 58, Ch. 246, L. 1957), relating to enforcement of zoning ordinances and to the termination of zoning district provisions, were repealed by Sec. 26, Ch. 247, Laws 1963.

11-3859. Citation of subdivision act. This act may be cited as the "Montana Subdivision and Platting Act."

History: En. Sec. 1, Ch. 500, L. 1973.

Title of Act

An act requiring local governing bodies to adopt subdivision regulations and in default thereof providing for the promulgation of departmental minimum requirements; providing for the submission of environmental assessments; providing for the administrative establishment of

procedures and requirements for preparation of subdivision plats; setting forth requirements for surveying and platting divisions of real property and for recording surveys and plats; providing for surveying, platting, and subdividing generally; and repealing sections 11-601 through 11-616, 11-3843 through 11-3848 and 11-3851, R. C. M. 1947.

11-3860. Statement of purpose. It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to encourage development in harmony with the natural environment; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973.

11-3861. Definitions. As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

1974 SUPPLEMENT

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

1974 SUPPLEMENT

(3) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(4.1) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

1974 SUPPLEMENT

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and sealed drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

1974 SUPPLEMENT

(8) "Final plat" means the final drawing of the subdivision and dedication required by this act to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

1974 SUPPLEMENT

(12) "Subdivision" means a division of land, or land so divided, which creates one or more parcels containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than twenty acres.

11-3862. Surveys required—exceptions—standards for monumentation.

(1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as $1/32$ or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with the Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2-413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

.1974 SUPPLEMENT

(5) The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.

(6) Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.

(a) Divisions made for the purpose of relocating common boundary lines between adjoining properties.

(b) Divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.

(c) Divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(d) A single division of a parcel when the transaction is an occasional sale.

(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

(8) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:

(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) which is created by a lien, mortgage, or trust indenture;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) which is created by the reservation of a life estate;

(f) which is created by lease or rental for farming and agricultural purposes.

(9) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

(10) The department of intergovernmental relations shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

11-3863

CITIES AND TOWNS

(11) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: Amd. Sec. 2, Ch. 334, L. 1974.

11-3863. Enforcement by governmental subdivisions—adoption of regulations—public hearing. (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the co-ordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger or injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of intergovernmental relations for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of intergovernmental relations, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this act. The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of intergovernmental relations, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3.1) When a subdivision is proposed in an area for which a master

plan has been adopted pursuant to sections 11-3801 through 11-3856 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than ten (10) parcels and less than twenty (20) acres, a planning board established pursuant to sections 11-3801 through 11-3856 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment. When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph.

1974 SUPPLEMENT

(4) Where required the environmental assessment shall accompany the preliminary plat and shall include:

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;

1973 SUPPLEMENT

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.

1974 SUPPLEMENT

(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

1973 SUPPLEMENT

(8) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent.

History: Amd. Sec. 3, Ch. 334, L. 1974.

1974 SUPPLEMENT

11-3864. Dedications of portions of subdivisions to the public—cash donations in lieu of dedications—waivers. (1) A plat of a residential subdivision shall show that one-ninth ($1/9$) of the combined area of lots five (5) acres or less in size and one-twelfth ($1/12$) of the combined area of lots greater than five (5) acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than ten (10) acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks or playgrounds is undesirable,

the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

1973 SUPPLEMENT

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings. 1974 SUPPLEMENT

(6) The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owners association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds. The area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use.

(7) The governing body may waive dedication and cash donation requirements for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision. The area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public.

History: Amd. Sec. 4, Ch. 334, L. 1974.

11-3865. Required abstract or title insurance—certification by city or county attorney. (1) The subdivider shall submit with the final plat a certificate of a licensed title abstracter showing the names of the owners of record of the land to be subdivided and the names of lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: Amd. Sec. 5, Ch. 334, L. 1974.

1974 SUPPLEMENT

11-3866. Submission of subdivision plat to governing body—notice—hearing—approval—disapproval. (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary

plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation unless the subdivider consents to an extension of the review period. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

(4) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year.

History: Amd. Sec. 6, Ch. 334, L. 1974.

11-3867. Filing of subdivision plat with county recorder—review .. final subdivision plats and certificates of survey by examining land surveyor. (1) The governing body may require that final subdivision plat and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed, stamped certificate on the plat or certificate of survey; such certificate shall be signed by him.

1974 SUPPLEMENT

No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

(2) The governing body shall examine every final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this act and regulations adopted pursuant thereto. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have such approval in proper form.

(3) Every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner or offered for sale or transfer. If illegal transfers or offers of any manner are made, the county attorney shall commence action to enjoin further sales, transfers, or offers of sale or transfer and compel compliance with all provisions of this act. The cost of such action shall be imposed against the person transferring or offering to transfer the property.

History: Amd. Sec. 7, Ch. 334, L. 1974.

11-3868. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973.

1973 SUPPLEMENT

11-3869. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973.

11-3870. Vacation of plat—easements of utilities. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by sections 11-2801 and 11-2803, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions; provided however, that when any pole line, pipeline, or any other public or private facility that is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

1974 SUPPLEMENT

(2) All plats, certificates of survey, and other title records recorded after June 30, 1973, and prior to the effective date of this act in accordance with the law in force at the time of recording, and all plats, certificates of survey, and other title records recorded prior to July 1, 1973, and which have not been subsequently vacated are hereby validated, notwithstanding irregularities, and have the same legal status as plats recorded under the provisions of this act.

(3) The recording of any plat made in compliance with the provisions of this act shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof, shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: En. Sec. 12, Ch. 500, L. 1973.

1973 SUPPLEMENT

(4) This act shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to the effective date of this act. Any instrument affecting real property which was executed prior to July 1, 1973, shall be deemed to be valid notwithstanding any failure to comply with platting or subdividing requirements in effect prior to July 1, 1973, and shall have the same force and effect as instruments complying with such platting and subdividing requirements.

1974 SUPPLEMENT

History: Amd. Sec. 8, Ch. 334, L. 1974.

11-3871. Donations or grants to public considered a grant to donee. Every donation or grant to the public, or to any person, society, or corporation, marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973.

1974 SUPPLEMENT

11-3872. Certificate of survey—when required—contents—form. (1) Within one hundred eighty (180) days of the completion of a survey the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and file for record a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;
(d) establishes one or more lines not shown on a recorded map the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this act.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this act.

History: En. Sec. 14, Ch. 500, L. 1973.

11-3873. Index of plats to be kept by county clerk and recorder. The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey. This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973.

11-3874. Correction of survey—at governing body's expense. When a recorded plat does not definitely show the location or size of lots or blocks, or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973.

11-3875. Administration of oaths by registered land surveyor. Every registered land surveyor may administer and certify oaths:

(1) when it becomes necessary to take testimony for the identification of old corners or re-establishment of lost or obliterated corners;

(2) when a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(3) when the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

A record of oaths shall be preserved as part of the field notes of the survey, and noted on the certificate of survey filed under this section.

History: En. Sec. 17, Ch. 500, L. 1973.

11-3876. Violation—misdemeanor. Any person who violates any provision of this act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than one

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hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment in a county jail for not more than three (3) months, or by both fine and imprisonment. Each sale, lease or transfer, or offer for sale, lease, or transfer of each separate parcel of land in violation of any provision of this act or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973.

Separability Clause

Section 19 of Ch. 500, Laws 1973 read "If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected."

Repealing Clause

Section 20 of Ch. 500, Laws 1973 read "Sections 11-601 through 11-616, 11-3843 through 11-3848, and 11-3851, R. C. M. 1947, are repealed."

CHAPTER 47

ZONING DISTRICTS

- Section 16-4701. Purpose of act—powers of county commissioners.
16-4702. Recommendations by city-county planning board.
16-4703. Establishment of districts—regulations for land use—scope—uniformity.
16-4704. Purposes of regulations—factors considered.
16-4705. Procedure for adoption of regulations and boundaries.
16-4706. Board of adjustment—exceptions to regulations—procedure—appeals.
16-4707. Penalty for violations—enforcement proceedings.
16-4708. Enforcement officers—location and conformance permits.
16-4709. Continuation of existing uses.
16-4710. Natural resources protected.
16-4711. Interim zoning map or regulation.

1973 SUPPLEMENT

16-4701. Purpose of act—powers of county commissioners. For the purpose of promoting the health, safety, morals and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to Title 11, chapter 38, the board of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this act.

History: En. Sec. 1, Ch. 246, L. 1963.

tion 11-3854 was repealed by Sec. 12, Ch. 246 and Sec. 26, Ch. 247, Laws 1963.

Compiler's Note

Sections 11-3809, 11-3841, 11-3849, 11-3850, included in the reference to Title 11, chapter 38 in this section, were repealed by Sec. 8, Ch. 271, Laws 1959; sections 11-3832, 11-3833 to 11-3839, 11-3856 to 11-3858 were repealed by Sec. 26, Ch. 247, Laws 1963; section 11-3852 was repealed by Sec. 12, Ch. 246, Laws 1963; and sec-

Collateral References

Counties—47.

20 C.J.S. Counties § 81.

53 Am. Jur. 947, Zoning § 14 et seq.

Law Review

Keefer, "City-County Planning in Montana—Its Status and Prospects," 25 Mont. L. Rev. 185, (Spring 1964).

16-4702. Recommendations by county planning board and city-county planning board. The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only. This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: En. Sec. 2, Ch. 246, L. 1963; and Sec. 17, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "county planning board and the" in the first and

second sentences; deleted "to act as a zoning commission" before "to recommend" in the first sentence; added the last sentence; and made minor changes in phraseology.

1973 SUPPLEMENT

16-4703. Establishment of districts—regulations for land use—scope—uniformity. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of section 11-3830 or section 11-3830.2, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or parts of the jurisdictional area.

(2) Within some such zoning districts it shall be lawful and within others it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, industries or callings.

(3) Within each district the height and bulk of future buildings and the area of the yards, courts and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

(4) All such regulations shall be uniform for each class or kind of buildings throughout a district, but the regulations in one (1) district may differ from those in other districts.

History: En. Sec. 3, Ch. 246, L. 1963.

Collateral References

Counties—47.

20 C.J.S. Counties § 81.

Zoning regulations as affecting churches. 138 ALR 1287 and 74 ALR 2d 377.

Constitutionality of zoning based on size of commercial or industrial enterprises or units. 7 ALR 2d 1007.

Validity of building height regulations. 8 ALR 2d 963.

Zoning regulations in respect of intoxicating liquors. 9 ALR 2d 877.

Zoning, change in ownership of nonconforming business or use as affecting right to continuance thereof. 9 ALR 2d 1039.

Validity of zoning ordinance requiring consent of neighboring property owners to permit or sanction specified uses for construction of buildings. 21 ALR 2d 551.

Zoning regulations as applied to schools,

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colleges, universities and the like. 30 ALR 2d 653.

Validity of zoning regulations prohibiting residential use in industrial district. 38 ALR 2d 1141.

Validity of zoning regulations with respect to uncertainty and indefiniteness of district boundary lines. 39 ALR 2d 766.

Spot zoning. 51 ALR 2d 263.

Applicability of zoning regulations to governmental projects or activities. 61 ALR 2d 970.

Access to industrial, or business premises over premises differently zoned. 63 ALR 2d 1446.

Zoning regulations as to gasoline filling stations. 75 ALR 2d 168.

Zoning regulations as to shopping centers. 76 ALR 2d 1172.

Validity of zoning ordinance limiting use of land near or surrounding airport. 77 ALR 2d 1362.

16-4704. Purposes of regulations—factors considered. The zoning regulations shall be made in accordance with a comprehensive development plan, and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area, and the zoning regula-

tions shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

History: En. Sec. 4, Ch. 246, L. 1963.

16-4705. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) the time and place of the public hearing;
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing the board of county commissioners shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;
- (d) that for thirty (30) days after first publication of this notice the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within thirty (30) days after the expiration of the protest period the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if forty (40) percent of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.

History: En. Sec. 5, Ch. 246, L. 1963; Am. Sec. 19, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "of coun-

ty commissioners" after "the board" in seven places; and made minor changes in punctuation.

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• 16-4706. Board of adjustment—exceptions to regulations—procedure—appeals. The board of county commissioners shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act shall provide that the board

of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this act.

(1) The board of adjustment shall consist of five (5) members, each to be appointed for a term of two (2) years, and removable for cause by the board of county commissioners upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of section 11-2707.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this act. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(3) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(4) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by his attorney.

(5) The board of adjustment shall have the following powers:

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative

official in the enforcement of this act or of any resolution adopted pursuant thereto.

To hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution.

To authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done.

(6) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(7) The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution, or to effect any variation in such resolution.

(8) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

(9) Upon presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board and on due cause shown, grant a restraining order.

(10) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(11) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or

affirm, wholly or partly, or may modify the decision brought up for review.

(12) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 6, Ch. 246, L. 1963.

20 C.J.S. Counties §§ 81, 95.

Collateral References

58 Am. Jur. 1045, Zoning, § 194.

Counties 47, 53.

16-4707. Penalty for violations—enforcement proceedings. A violation of this act or any resolution adopted pursuant thereto is hereby declared to be a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars (\$500) or imprisonment in the county jail not exceeding six (6) months, or both.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this act, or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 7, Ch. 246, L. 1963.

tion as affecting or creating liability for injuries or death. 31 ALR 2d 1469.

Collateral References

Violation of zoning ordinance or regula-

16-4708. Enforcement officers — location and conformance permits. The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions, and may provide for the issuance of location or conformance permits and may collect a fee for each such permit, and the proceeds of such fees shall be deposited in the general fund of the county.

History: En. Sec. 8, Ch. 246, L. 1963.

16-4709. Continuation of existing uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued, although such use does not conform to the provisions of such resolution.

History: En. Sec. 9, Ch. 246, L. 1963.

16-4710. Natural resources protected. No resolution, rule or regulation adopted pursuant to the provisions of this act shall prevent the complete use, development or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 10, Ch. 246, L. 1963.

1973 SUPPLEMENT

16-4711. Interim zoning map or regulation. If a county is conducting, or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this chapter, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency. Such interim resolution shall be limited to one (1) year from the date it becomes effective. The board of county commissioners may extend such interim resolution for one (1) year, but not more than one (1) such extension may be made.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971.

Separability Clause

Section 21 of Ch. 273, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid,

all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 27

BUILDING REGULATIONS—ZONING COMMISSION

- Section 11-2701. Building restrictions by cities and towns authorized.
11-2702. Districts for effecting building restrictions.
11-2703. Purposes of act.
11-2704. Method of procedure.
11-2705. Changes.

- 11-2706. Zoning commission.
11-2707. Board of adjustment.
11-2708. Enforcement and remedies.
11-2709. Conflict with other laws.
11-2710. Repealed.

Section

- 11-2702. Districts for effecting building restrictions.

1973 SUPPLEMENT

- 11-2702.1. Community residential facility—defined.

- 11-2702.2. Foster, boarding homes, community residential facilities considered residential.

- 11-2705. Changes.

11-2701. (5305.1) Building restrictions by cities and towns authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council, or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929.

Cross-Reference

City-county planning boards, sec. 11-3801 et seq.

Constitutionality

This act, authorizing the creation of zoning ordinances in cities and towns and the appointment of a board of adjustment, as well as such an ordinance involved in the case at bar, is free from constitutional objections. *Freeman v. Board of Adjustment, City of Great Falls*, 97 M 342, 347, 34 P 2d 534.

State May Delegate Police Power to Municipality

The state, in which the police power is lodged, may by act of the legislature delegate such power to a municipality for the purpose of enacting zoning ordinances, as it did in this state by enacting chapter 136, Laws of 1929 (11-2701 to 11-2709). *Freeman v. Board of Adjustment, City of Great Falls*, 97 M 342, 347, 34 P 2d 534.

Collateral References

Municipal Corporations—601 (1).

62 C.J.S. Municipal Corporations § 226 (1) et seq.

13 Am. Jur. 2d 266, Buildings, § 2 et seq.

Constitutionality of city or town planning statutes or ordinances. 12 ALR 679; also 28 ALR 314; 44 ALR 1377 and 53 ALR 1222.

Public regulation of gasoline filling stations. 18 ALR 101; 29 ALR 450; 34 ALR 507; 42 ALR 978; 49 ALR 767; 55 ALR 256; 79 ALR 918 and 96 ALR 1337.

Zoning: Creation by statute or ordinance of restricted residence districts within municipality from which business buildings are excluded. 19 ALR 1395; 33 ALR 287; 38 ALR 1496; 43 ALR 668; 54 ALR 1030; 86 ALR 659 and 117 ALR 1117.

Constitutionality of statute or ordinance

limiting height of buildings. 34 ALR 46 and 8 ALR 2d 963.

Zoning regulations with respect to garages. 40 ALR 351; 55 ALR 374 and 84 ALR 1150.

Injunction as a remedy for violation of zoning ordinance. 54 ALR 366 and 129 ALR 885.

What enterprise or activity is permissible in business zone. 128 ALR 1214.

Suburban zoning regulations. 131 ALR 1055.

Attack upon validity of zoning statute or ordinance as affected by provisions for variation, permit, etc. 136 ALR 1373.

Building restrictions, by covenant or condition in deed or by zoning regulation, as applied to religious groups. 148 ALR 367.

Construction and application of provision of zoning ordinance which permits use for accessory or incidental purposes. 150 ALR 491.

Zoning regulations in relation to cemeteries. 151 ALR 742.

Radio equipment as within zoning ordinance or restrictive covenant. 155 ALR 1134.

Construction and application of provisions of zoning regulations respecting permissible use, where lot or parcel is divided by zone boundary lines. 159 ALR 854.

Zoning regulations as affecting airports and airport sites. 161 ALR 1232.

Validity of building height regulations. 8 ALR 2d 963.

Zoning regulations in respect of intoxicating liquors. 9 ALR 2d 877.

Validity and effect of "spot zoning." 51 ALR 2d 263.

Zoning: Changes, repairs, or replacements in continuation of nonconforming use. 87 ALR 2d 4.

Construction and application of terms "agricultural," "farm," "farming," or the like in zoning regulations. 97 ALR 2d 702.

Construction and application of zoning regulations in connection with bomb or fallout shelters. 7 ALR 3d 1443.

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits. 10 ALR 3d 1226.

Application of zoning regulations to automatic vending machines. 11 ALR 3d 1004.

Meaning of the term "garage" as used in zoning regulation. 11 ALR 3d 1187.

Purchaser of real property as precluded from attacking validity of zoning regulations existing at the time of the purchase and affecting the purchased property. 17 ALR 3d 743.

11-2702. (5305.2) Districts for effecting building restrictions. (1)
For any or all of said purposes the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

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(2) The local city or town council, or other legislative body which has adopted a master plan pursuant to Title 11, chapter 38 may extend the application of its zoning or subdivision regulations or both beyond its limits in any direction, but not in a county which has adopted such regulations within the contemplated area; provided that a city of the first class as defined in section 11-201 of this code may not extend the application of its zoning or subdivision regulations or both more than three (3) miles beyond its limits, a city of the second class may not so extend more than two (2) miles beyond its limits, and a city or town of the third class may not so extend more than one (1) mile beyond its

limits. Provided, further, that where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, then the extension of zoning or subdivision regulations or both by these cities shall terminate at a boundary line agreed upon by the cities so concerned. Any city or town council or other legislative body, may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area. As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two (2) representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area.

A city or town, which has as its plan of government the commission-manager plan, shall be excluded from the provision of section 11-2702 (2) which defines extraterritorial authority to review proposed subdivisions.

History: En. Sec. 2, Ch. 136, L. 1929; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973.

Amendments

The 1971 amendment designated the former language as subsection (1) and added subsection (2).

The 1973 amendment inserted "a county planning board whose jurisdictional area includes the area to be regulated must be formed or" in the fourth sentence of subsection (2); and inserted "existing" before "city planning board" in the same sentence.

1973 SUPPLEMENT

11-2702.1. Community residential facility—defined. "Community residential facility" means (1) a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care, or (2) a district youth guidance home established pursuant to section 10-1103, or (3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons.

History: Amd. Sec. 1, Ch. 129, L. 1974.

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11-2702.2. Foster, boarding homes, community residential facilities considered residential. A foster or boarding home operated under the provision of sections 10-520 through 10-523, or community residential facility serving eight (8) or fewer persons, is considered a residential use of property for purposes of zoning if the home provides care on a twenty-four (24) hour a day basis.

The homes are a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings. Nothing in this paragraph shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of this paragraph; provided such home is licensed by the department of health and environmental sciences and the department of social and rehabilitation services. Any safety or sanitary regulation of the department or any other agency of the state or political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight (8) or fewer persons.

History: Amd. Sec. 2, Ch. 129, L. 1974.

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11-2703. (5305.3) Purposes of act. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

History: En. Sec. 3, Ch. 136, L. 1929.

11-2704. (5305.4) Method of procedure. The city or town council, or other legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.

History: En. Sec. 4, Ch. 136, L. 1929.

References

Olson v. City Commission of City of Helena, 146 M 386, 407 P 2d 374.

11-2705. (5305.5) Changes. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those adjacent on either side thereof within the same block, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths ($\frac{3}{4}$) of all the members of the city or town council or legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

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History: En. Sec. 5, Ch. 136, L. 1929; and Sec. 1, Ch. 161, L. 1969.

those adjacent . . . same block" before
"or of those directly opposite . . ." in
the second sentence.

11-2706. (5305.6) Zoning commission. In order to avail itself of the powers conferred by this act, the city or town council or other legislative body, shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: En. Sec. 6, Ch. 136, L. 1929.

Collateral References

Cross-Reference

Municipal Corporations § 621 (39).

City-county planning boards, 11-3801
et seq.

62 C.J.S. Municipal Corporations § 227
(1).

11-2707. (5305.7) Board of adjustment. Such city or town council or other legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act may provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

(1) The board of adjustment shall consist of five (5) members, each to be appointed for a term of three (3) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(2) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(3) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(4) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties interested, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by attorney.

(5) The board of adjustment shall have the following powers:

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.

To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(6) In exercising the above-mentioned powers such board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(7) The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

(8) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of

record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

(9) Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(10) The board of adjustment shall not be required to return the original papers acted upon by it, but shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(11) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partially, or may modify the decision brought up for review.

(12) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81 (a), Table A.

Powers of Board of Adjustment Broad, General and Discretionary

Contention that the powers of the board of adjustment (or appeal) created by this act, authorizing the enactment of zoning ordinances in cities and towns, are limited to slight variations, such as the height of a building, the distance it must be from the street, etc., held not meritorious, but that on the contrary the board, an administrative body vested with general power to act as a fact-finding body and determine whether in any specific case unusual hardship might result from an enforcement of the strict letter of the ordinance, possesses broad and general powers with a considerable latitude for the exercise of the discretion, the conferring of which powers does not constitute an unlawful delegation of legislative authority. *Free-*

man v. Board of Adjustment of City of Great Falls, 97 M 342, 368, 34 P 2d 534, distinguished in 141 M 354, 368, 377 P 2d 753.

Prior to the enactment of a city zoning ordinance a grocery store had been conducted for several years in a rented building later incorporated in a residential district under the ordinance; after its enactment the storekeeper purchased a lot in the same block and but a short distance from the location of the store and contracted for the erection of a structure thereon for store and residence purposes and asked for a building permit. The permit being refused on the ground that the location was in a residential district, he appealed to the board of adjustment appointed under the ordinance, which ordered that the permit be granted because denial of it would result in unnecessary hardship. Held, on appeal by the former landlord of petitioner from a judgment of the district court on writ of certiorari affirming the action of the board, that there was not sufficient substantial evidence to warrant a finding that the board had not

Evidence at Hearing

Taking of additional evidence by district court on appeal from board of adjustment's denial of zoning variance was not

abuse of discretion even though board did not present any additional evidence. *Lambros v. Board of Adjustment of City of Missoula*, 153 M 20, 452 P 2d 398.

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abused its discretion in making the order attacked. *Freeman v. Board of Adjustment of City of Great Falls*, 97 M 312, 268, 34 P 2d 534, distinguished in 141 M 354, 368, 377 P 2d 758.

Collateral References

Municipal Corporations \S 621 (39).
62 C.J.S. Municipal Corporations \S 227 (2).

Validity and construction of provisions of zoning statute or ordinance respecting protest or petition by property owners. 4 ALR 2d 335.

Validity of zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings. 21 ALR 2d 551.

11-2708. (5305.8) Enforcement and remedies. The city or town council, or other legislative body, may provide by ordinance for the enforcement of this act and of any regulation or ordinance made thereunder. A violation of this act, or of such ordinance or regulation is hereby declared to be a misdemeanor and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure, or land is used in violation of this act, or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 8, Ch. 136, L. 1929.

Collateral References

Municipal Corporations \S 621 (48), 631 (2).
62 C.J.S. Municipal Corporations \S 228 (1), 315 et seq.

Right to resume nonconforming use after period of nonuse or of a different use from that in effect at or before the time of zoning. 18 ALR 2d 725.

11-2709. (5305.9) Conflict with other laws. Wherever the regulations made under authority of this act require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this act shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this act, the provisions of such statute or local ordinance or regulation shall govern.

History: En. Sec. 9, Ch. 136, L. 1929.

Collateral References

Municipal Corporations \S 592 (1).
62 C.J.S. Municipal Corporations \S 143.

11-2710

CITIES AND TOWNS

11-2710. Repealed.—Chapter 246, Laws of 1963.

Repeal.

This section (Sec. 1, Ch. 171, L. 1959), giving zoning powers to boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

Unconstitutional

This section (Sec. 1, Ch. 171, L. 1959),

authorizing county commissioners to exercise building and zoning regulatory powers was invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of section 1, article IV of the Montana constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

History: En. Sec. 12, Ch. 140, L. 1935.

29 C.J.S. Eminent Domain § 64; 63 C.J.S. Municipal Corporations § 959.

Collateral References

Eminent Domain 17; Municipal Corporations 223.

35-113. (5309.13) Zoning and building laws. All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated.

History: En. Sec. 13, Ch. 140, L. 1935.

General Ordinances Will Not Apply to Defeat Purpose of Housing Act

Application of General Municipal Laws

After a city council has authorized a housing authority, the general municipal laws relating thereto must be applied only when they will not defeat the purpose of the housing act, and all things thereafter done pass under the exclusive control of the provisions of the act; after the city has entered into a transaction of a contractual nature with its housing authority with relation to vacating streets and rezoning land selected for the project, it cannot thereafter repudiate it irrespective of change of personnel of the city council. State ex rel. Great Falls Housing Authority v. City of Great Falls, 110 M 318, 326. 100 P 2d 915.

This section, declaring that housing projects shall be subject to the planning, zoning, sanitary and building laws applicable to the locality in which the project is situated, when construed with section 35-127, means that the general municipal laws relating thereto must be applied only when they will not defeat the purpose of the housing act. State ex rel. Great Falls Housing Authority v. City of Great Falls, 110 M 318, 331, 100 P 2d 915.

Collateral References

Municipal Corporations 601.
62 C.J.S. Municipal Corporations § 224.

TITLE 69—PUBLIC HEALTH AND SAFETY
CHAPTER 21—BUILDING AND MOBILE HOME
CONSTRUCTION STANDARDS

69-2104. Repealed—Chapter 226, § 14, Laws of 1974.

69-2105. **Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (12) of this section.

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Department" means the department of administration provided for in Title 82A, chapter 2.

(4) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement

of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

(5) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(6) "Building" means a combination of any materials, whether mobile, portable, or fixed to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof."

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumb-waiters, escalators, and other mechanical additions or installations.

(8) "Construction" means the original construction, and equipment of buildings, and requirements or standards relating to or affecting materials used including provisions for safety and sanitary conditions.

(9) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm, or corporation, in control of a building.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) "State building code" means the state building code provided for in section 69-2111 or any portion of the code of limited application, and any of its modifications or amendments.

(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. Upon request the council may approve extension of the jurisdictional area to include all or part of the area within four and one-half (4½) miles of the corporate limits of a municipality, measured in a straight line in a horizontal plane.

(13) "Public place" means any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be.

(14) "Mobile home" means any dwelling unit larger than two hundred fifty-six (256) square feet in area which is either wholly or in substantial part manufactured at an off-site location and any movable or portable dwelling over thirty-two (32) feet in length and over eight (8) feet wide; constructed to be towed on its own chassis and designed without a permanent foundation for year-round occupancy, which includes one (1) or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or of two (2) or more units separately towable but designed to be joined into one (1) integral unit, as well as a portable dwelling composed of a single unit.

(15) "Recreational vehicle" means any movable or portable dwelling primarily designed as temporary living quarters for recreational, camping or travel use which either has its own motive power or is mounted on or drawn by another vehicle and which is less than thirty-two (32) feet in length.

History: Amd. Sec. 1, Ch. 226, L. 1974.

69-2106. Repealed—Chapter 226, § 14, Laws of 1974.

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69-2107. Applicable to public places outside municipalities—limitation of code. (1) Outside municipalities and their jurisdictional area as defined by section 69-2105, subsection (12) of this chapter, this chapter applies to "public places" as defined in section 69-2105, subsection (13).

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record. The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings, according to use, or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable.

History: En. Sec. 4, Ch. 366, L. 1969.

Compiler's Notes

Section 2 of Ch. 366, Laws 1969 did not

contain a subsection (15); the compiler inserted the bracketed reference to subsection (14) in subsection (1) of this section.

History: Amd. Sec. 2, Ch. 226, L. 1974.

69-2108. Repealed—Chapter 226, § 14, Laws of 1974.

69-2109. Duties of department. The department shall administer this chapter, and for that purpose shall:

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(1) issue orders necessary to effectuate the purposes of this act and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under this chapter;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of such acceptability.

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and co-operate with other agencies of the state, local governments, industries, and interested persons or groups.

History: Amd. Sec. 3, Ch. 226, L. 1974.

69-2110. Purposes of state building code. The state building code shall be designed to effectuate the general purposes of this chapter and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials, consonant with accepted standards of design, engineering and fire prevention practices;

(2) permit to the fullest extent feasible, the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs or retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction;

(4) ensure that buildings constructed with public funds are accessible to, and functional for, physically handicapped persons where practicable and feasible.

History: En. Sec. 7, Ch. 366, L. 1969.

• 39 C.J.S. Health § 22.

Collateral References

13 Am. Jur. 2d 266 et seq., Buildings, § 2 et seq.

Health 32.

History: Amd. Sec. 4, Ch. 226, L. 1974.

69-2111. Adoption of rules by department. (1) The department shall adopt by reference nationally recognized building codes in whole or in part, amend and repeal rules relating to the construction of all buildings or classes or buildings of the installation of equipment in those buildings, and may by rule prescribe standards or requirements for materials to be used in buildings including provisions dealing with safety and sanitation. The rules, when adopted as provided in this chapter, constitute the "state building code" and shall be acceptable for the buildings to which it is applicable.

(2) The department may hold hearings relating to the administration of this act in accordance with the Montana Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, no rule and no amendment or repeal of the state building code shall take effect until after a public hearing by the department.

(4) If a hearing has been held by the department of justice with respect to its duties contained in Title 82, chapter 12, the board of plumbers, the department of health and environmental sciences, or state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

(5) If a rule relating to building or equipment standards is proposed by the department of justice with respect to its duties contained in Title 82, chapter 12, board of plumbers, department of health and environmental sciences, or state electrical board which conflicts with the state building code, the department shall modify the proposed rule or the state building code to resolve the conflict after consultation with the state agencies affected.

History: Amd. Sec. 5, Ch. 226, L. 1974.

69-2112. Municipal building codes—applicability of state code. (1) The local legislative body of a municipality may adopt a municipal building code by ordinance to apply to the municipal jurisdictional area. A municipal building code shall require standards equal to those of the state building code or higher standards. A municipal building code must cover all general areas included in the state building code. — — —

(2) If a municipality does not adopt a municipal building code as provided in subsection (1) of this section, the state building code applies within the municipal jurisdictional area.

(3) The Council shall determine whether a municipal building code has standards equal to those of the state building code or higher standards and notify municipalities immediately if any municipal standards are below the state standards.

(4) If a municipal code is adopted, a copy of the code and any amendments to the code shall be filed with the council. ~~Department~~

History: En. Sec. 9, Ch. 366, L. 1969.

Collateral References

13 Am. Jur. 2d 269, Buildings, § 5.

69-2113. Permit necessary. Any person who desires to construct a building which is subject to the provisions of this chapter must apply for a permit from the appropriate authorities.

History: Amd. Sec. 6, Ch. 226, L. 1974.

69-2114. Department's powers—variances—review. (1) The department has the power on satisfactory proof, after a public hearing, to:

(a) vary or modify, in whole or part, the application of any provision or requirement of the state building code if strict compliance would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security and equally safe and proper alternatives may be prescribed therefor;

(b) reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review within thirty (30) days after disapproval, any application for permission for the construction of a building pursuant to the provisions of the state building code, or plans or specifications submitted in connection therewith;

(d) reverse, modify, or annul the disapproval in whole or part;

(e) within thirty (30) days, make a determination that the application or plans or specifications are in compliance with the provisions of the state building code. If this determination is made, the officer charged with the duty shall issue any permit, license, certificate, authorization, or other document required for the construction.

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved pursuant to the Montana Administrative Procedure Act.

(a) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(b) The department, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence.

History: Amd. Sec. 7, Ch. 226, L. 1974.

69-2115. Repealed—Chapter 226, § 14, Laws of 1974.

69-2116. Municipal appeal procedures. If a municipality adopts a municipal building code, it shall also establish an appeal procedure by ordinance which is acceptable to the council. If a municipality does not adopt a code, appeals on the application of the state building code within the municipal jurisdictional area shall be made to the council. *CCJ - 10-1-69*

History: En. Sec. 13, Ch. 366, L. 1969.

69-2117. Municipal responsibilities and powers. The examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings and the administration and enforcement of building regulations within the municipal jurisdictional area shall be the responsibility of the municipalities of the state. Each municipality may:

(1) Examine and approve or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction.

(2) Require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the state building code council. *CCJ - 10-1-69*

(3) Order in writing the remedying of any condition found to exist in, on, or about any building in violation of the state or municipal building code. Orders may be served upon the owner or his authorized agent personally or by sending by registered mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building. Any local building department, by action of an authorized officer, may grant in writing such time as may be reasonably necessary for achieving compliance with the order.

(4) Issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of the buildings as required. A certificate of occupancy for a building constructed in accordance with the provisions of the state or municipal building code shall certify that the building conforms to the requirements of the building regulations applicable to it. Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all municipal agencies, as to all matters set forth and no order, directive, or requirement at variance therewith may be made or issued by any other state or municipal agency.

(5) Make, amend, and repeal rules for the administration and enforcement of the provisions of this section, and for the collection of reasonable fees, which shall be comparable to fees imposed or prescribed by existing local building regulations.

(6) Prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code.

History: En. Sec. 14, Ch. 366, L. 1969.

62 C.J.S. Municipal Corporations §§ 225-228.

Collateral References

Municipal Corporations § 601.

69-2118. Injunctive powers. The construction or use of the building in violation of any provision of the state or municipal building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located. This section will be governed by the Montana Rules of Civil Procedure.

History: En. Sec. 15, Ch. 366, L. 1969.

39 C.J.S. Health § 36.

Collateral References

13 Am. Jur. 2d 306-308, Buildings, §§ 39-40.

Health 23.

69-2119. Violation of order or codes a misdemeanor. Any person, served with an order pursuant to the provisions of this chapter, who fails to comply with the order not later than thirty (30) days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor.

History: Amd. Sec. 8, Ch. 226, L. 1974.

69-2120, 69-2121. Repealed—Chapter 226, § 14, Laws of 1974.

69-2122. Mobile homes—Rule-making power. The department shall make rules embodying the fundamental principles adopted, recommended, issued as USAS A119.1 and USAS A119.2 and amended from time to time by the United States of America Standards Institute (USASI), successor to the American Standards Association (ASA) and American National Standards applicable to mobile homes and recreational vehicles as defined in section 69-2105.

History: Amd. Sec. 9, Ch. 226, L. 1974.

69-2123. Compliance with the department's rules. No person, firm or corporation may manufacture, sell, or offer for sale any mobile home or recreational vehicle, unless such mobile home or recreational vehicle, its components, systems and appliances have been constructed and assembled in accordance with the standards herein defined. Any mobile home or recreational vehicle unit which has been approved by the department shall be deemed to be in full compliance with the standards and rules and regulations prescribed in this chapter. All mobile home or recreational vehicle units thus approved shall be acceptable as meeting the requirements of this chapter throughout the state of Montana without further inspection or fees except for zoning, utility connections and foundation permits required by local ordinance.

History: Amd. Sec. 10, Ch. 226, L. 1974.

69-2124. Fees. The ^{department} council shall establish a schedule of fees for the inspection of plans and specifications for mobile homes or recreational vehicles and for the inspection of individual units. The council may utilize independent testing laboratories or the agencies of other states to determine if approved models of mobile homes or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models.

History: En. Sec. 4, Ch. 348, L. 1971.

CHAPTER 56—TOURIST CAMPGROUNDS AND TRAILER COURTS

Section

- 69-5601. Definitions.
69-5602. Rules—adoption by state board of health.
69-5603. License from state department of health required—inspections.
69-5604. Application for license—form and contents—license fee—duration of license.
69-5605. Inspection of grounds.
69-5607. Violations and penalty—disposition of fines.

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69-5601. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Tourist campground" means a place used for public camping primarily by automobile tourists where persons can camp or secure tents or park individual trailers or truck trailers for camping and sleeping purposes.

(2) "Trailer court" means a parcel of land offered to the public and usually designated a trailer court, trailer park or mobile home park upon which two (2) or more spaces are occupied or intended for occupancy by trailers or mobile homes for nonrecreational dwelling purposes.

(3) "Board" means the state board of health and environmental sciences.

(4) "Department" means the state department of health and environmental sciences.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating or owning or offering the services of a tourist campground or trailer court.

History: En. Sec. 212, Ch. 197, L. 1967; amd. Sec. 1, Ch. 383, L. 1973.

Amendments

The 1973 amendment divided the former section into the preliminary clause and subdivision (1); combined two sentences of subdivision (1) into one by deleting "The

term includes places" at the beginning of the former second sentence; substituted "tents" in subdivision (1) for "cabins or tents, trailer courts, and similar public places"; added "or park individual trailers or truck trailers for camping and sleeping purposes" at the end of subdivision (1); and added subdivisions (2) to (5).

1973 SUPPLEMENT

69-5602. Rules—adoption by state board of health. The department shall adopt rules for construction and operating tourist campgrounds and trailer courts to ensure sanitation and protect public health.

History: En. Sec. 213, Ch. 197, L. 1967; department" for "state board of health";
amd. Sec. 2, Ch. 383, L. 1973. and inserted "construction and" and "and
trailer courts."

Amendments

The 1973 amendment substituted "de-

1973 SUPPLEMENT

69-5603. License from state department of health required—inspections. A person operating a tourist campground or trailer court shall:

- (1) obtain a license from the department;
- (2) permit inspections by state, local health officers, sanitarians or other authorized persons at all reasonable times.

History: En. Sec. 214, Ch. 197, L. 1967; the former subdivision (2) requiring post-
amd. Sec. 3, Ch. 383, L. 1973. ing of state board of health rules; re-
numbered subdivision (3) as (2) and in-
serted "sanitarians or other authorized
persons" in subdivision (2).

Amendments

The 1973 amendment inserted "or trailer court" in the preliminary clause; deleted

1973 SUPPLEMENT

69-5604. Application for license—form and contents—license fee—duration of license. Application for a license is made to the department on forms, and containing information, required by the department. Each application shall be accompanied by a fee of ten dollars (\$10). Licenses expire on December 31 of the year in which they are issued. Fees collected by the department shall be deposited in the state general fund.

History: En. Sec. 215, Ch. 197, L. 1967;
amd. Sec. 4, Ch. 383, L. 1973.

Amendments

The 1973 amendment increased the application fee from five dollars to ten dollars and added the fourth sentence.

1973 SUPPLEMENT

69-5605. Inspection of grounds. The department or local health officer or sanitarian shall:

(1) inspect tourist campgrounds and trailer courts during reasonable hours as necessary;

(2) supervise the inspection of tourist campgrounds or trailer courts by local health officers, sanitarians or other authorized persons as necessary.

History: En. Sec. 216, Ch. 197, L. 1967; amd. Sec. 5, Ch. 383, L. 1973.

Amendments

The 1973 amendment deleted former subsection (1) providing for denial or revocation of licenses; deleted the numerical designation for former subsection (2); in-

serted "or local health officer or sanitarian" in the preliminary clause; redesignated former subdivisions (2) (a) and (2) (b) as (1) and (2); inserted references to trailer courts in subdivisions (1) and (2); and deleted former subdivision (2) (c), providing for a \$5 license fee.

1973 SUPPLEMENT

69-5606. Denial of application for or revocation of license—request for hearing before the board, notice. If the department denies an application for a license or revokes a license that has been issued, an applicant or licensee is entitled to a hearing before the board of health and environmental sciences to show cause why the action should not be taken. If a hearing is desired, the applicant or licensee shall notify the board in writing before the tenth day after notice of the denial or revocation is received.

History: Amd. Sec. 81, Ch. 349, L. 1974.

1974 SUPPLEMENT

69-5607. Violations and penalty—disposition of fines. A person violating provisions of this act, or rules adopted by the department, is guilty of a misdemeanor. On conviction he shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). Fines shall be paid to the county treasurer of the county in which the tourist campground or trailer court is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967; amd. Sec. 6, Ch. 383, L. 1973.

Amendments

The 1973 amendment substituted "department" for "state board" in the first sentence; inserted "or trailer court" in the second sentence; and made minor changes in style.

Separability Clause

Section 7 of Ch. 383, Laws 1973 read "It is the legislative intent that if any section, subsection, sentence, clause or provision of the act is held invalid, the remainder of the act shall not be affected."

1973 SUPPLEMENT

CHAPTER 8

ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES— MUNICIPAL AIRPORTS ACT

- Section 1-801. Counties, cities and towns may acquire land for, and establish airports and landing fields.
- 1-802. Land when deemed acquired for public use—exercise power of eminent domain.
- 1-803. Creation of board to govern airport—fees—fund for maintenance—rules and regulations.
- 1-804. Tax levy for establishment and operation of airports.
- 1-805. Validation of previous contracts and tax levies.
- 1-806. Construction of act.
- 1-807. Highway commission may assist municipalities in constructing roads to airports.
- 1-808. Definitions.
- 1-809. General powers of municipalities in the establishment, nequisition, operation and maintenance of airports and air navigation facilities.
- 1-810. Eminent domain.
- 1-811. Disposal of airport property.
- 1-812. Operation and use privileges.
- 1-813. Liens.
- 1-814. Delegation of authority to airport officer or board.
- 1-815. Regulations and jurisdiction.
- 1-816. Appropriations and taxation.
- 1-817. Application of airport revenues and sale proceeds.
- 1-818. Federal and state aid.
- 1-819. Mutual aid.
- 1-820. Contracts.
- 1-821. Joint operations.
- 1-822. Public purpose, county and municipal purpose.
- 1-823. Airport property and income exempt from taxation.
- 1-824. Supplementary authority.
- 1-825. Saving clause—airport zoning.
- 1-826. Interpretation and construction.
- 1-827. Severability.
- 1-828. Short title.

CHAPTER 9—MUNICIPAL AND REGIONAL AIRPORT AUTHORITIES

Section

- 1-901. Definitions.
- 1-902. Aeronautics commission may exercise powers of airport authority—exceptions.
- 1-903. Airport operation and income.
- 1-904. Creation of municipal airport authority.
- 1-905. Creation of regional airport authority.
- 1-906. Sinking funds for repair, maintenance and capital outlays.
- 1-908. Commissioners—compensation—meetings—officers.
- 1-909. General powers of an authority.
- 1-910. Eminent domain.
- 1-911. Disposal of airport property.
- 1-912. Bonds and other obligations.
- 1-913. Operation and use privileges.
- 1-914. Regulations.
- 1-915. Federal and state aid.
- 1-916. Tax levy may be certified by airport authority or municipality.
- 1-917. County tax levy for airport purposes.
- 1-918. Joint operations.
- ~~1-919. Public purpose.~~
- 1-920. Airport property and income exempt from taxation.
- 1-921. Municipal co-operation.
- 1-922. Out-of-state airport jurisdiction authorized—reciprocity with adjoining state and governmental agencies.
- 1-923. Supplemental authority.
- 1-924. Savings clause—airport zoning.
- 1-925. Short title.
- 1-926. Repealing clause.
- 1-927. Severability clause.

CHAPTER 15

COUNTY LAND ADVISORY BOARD

- Section 16-1501. County land advisory boards—creation and purpose.
16-1502. Definition of terms.
16-1503. Membership of board—duties.
16-1504. Meetings—quorum—record of minutes—rules and regulations—county clerk to be clerk of board.
16-1505. Policy of state declared.
16-1506. Examination, classification and appraisal of land may be recommended by board.
16-1507. Co-operation in establishing grazing districts.
16-1508. Advisory capacity of board concerning leases.
16-1509. Assistance in exchange of lands.
16-1510. Prior dispositions of property validated.
16-1511. Dispositions of property prior to 1967 validated.

16-1501. (4573.1) County land advisory boards—creation and purpose. There is hereby created in each county, a department of county government of the state of Montana, to be known and designated as "the county land advisory board." The general purposes of this department shall be to co-operate with the boards of county commissioners of each county in administering lands belonging to the respective counties.

History: En. Sec. 1, Ch. 67, L. 1933.

Collateral References

Counties ~~61~~.

20 C.J.S. Counties § 100.

16-1502. (4573.2) Definition of terms. In this act, the term, "lands," shall mean all lands now owned by the respective counties, which have been acquired by the counties through tax deed proceedings and any lands to be hereafter acquired by the same means, and all lands acquired by the respective counties by deed, exchange, or in any manner whatsoever, excepting, however, such lands as are owned or may be acquired for the regular conduct of county affairs. The term "board" shall mean "the county land advisory board."

History: En. Sec. 2, Ch. 67, L. 1933.

Collateral References

Counties \hookrightarrow 106.

20 C.J.S. Counties 169.

16-1503. (4573.3) Membership of board—duties. The board of each county shall consist of five members. The membership and terms shall be as follows: Three properly qualified taxpayers and residents, to be appointed by the judge of the district court, one for a two year term; one for a four year term; and one for a six year term, (and on the expiration of such terms, the succeeding members shall be appointed for the term of six years, the state senator and one state representative, who shall be designated by the judge of the district court.) The members shall serve without pay. The board shall advise with boards of county commissioners in the direction, control, care, management, appraisal, lease, sale, exchange and disposition of all lands, when so requested by said board of county commissioners.

History: En. Sec. 3, Ch. 67, L. 1933.

Collateral References

Counties \hookrightarrow 62, 65, 106.

20 C.J.S. Counties §§ 101, 106, 169.

16-1504. (4573.4) Meetings—quorum—record of minutes—rules and regulations—county clerk to be clerk of board. The board shall hold regular meetings on the first Wednesday following the first Monday of each month, and may hold meetings whenever deemed necessary upon call of the chairman, or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The board shall, from its membership, select a chairman. It shall be the duty of the board to keep a record of the minutes of all meetings thereof in a suitable book provided by the board of county commissioners for that purpose, and to preserve all important documents, maps, plats and papers. The board may adopt whatever rules and regulations it deems proper for the conduct of its meetings. The county clerk shall be the clerk of said board, and as such shall keep the minutes of all meetings thereof and be custodian of all its records.

History: En. Sec. 4, Ch. 67, L. 1933.

Collateral References

Counties \hookrightarrow 83.

20 C.J.S. Counties § 139.

16-1505. (4573.5) Policy of state declared. It is hereby declared to be the policy of the state of Montana: To promote the conservation of the natural resources of the state; to provide for the conservation, protection and development of forage plants, and for the beneficial utilization thereof for grazing by livestock under such regulations as may be considered necessary; to put into crop production only such lands as are properly fitted therefor; to encourage the storage and conservation of water for livestock and irrigation; to place the farming and livestock industries upon a perma-

ment and solid foundation; to extend preference in sales and leases of lands to resident farmers, stockmen and taxpayers; to gradually restore to private ownership the immense areas of lands, which have passed into county ownership because of tax delinquencies.

History: En. Sec. 5, Ch. 67, L. 1933.

16-1506. (4573.6) Examination, classification and appraisal of land may be recommended by board. The board may recommend the examination, classification and appraisal of such lands as in its opinion have not previously been properly examined, classified and appraised.

History: En. Sec. 6, Ch. 67, L. 1933.

16-1507. (4573.7) Co-operation in establishing grazing districts. The board may co-operate with boards of county commissioners in establishing grazing districts or entering into agreements with other landowners for the establishment of grazing districts, whereby county lands may be leased either on a per head or per acre basis.

History: En. Sec. 7, Ch. 67, L. 1933.

16-1508. (4573.8) Advisory capacity of board concerning leases. The board may act in an advisory capacity in fixing the fees, terms and conditions of grazing and agricultural leases.

History: En. Sec. 8, Ch. 67, L. 1933.

16-1509. (4573.9) Assistance in exchange of lands. The board may be called upon by boards of county commissioners to assist in making exchanges of lands with other owners.

History: En. Sec. 9, Ch. 67, L. 1933.

Collateral References

Counties \hookrightarrow 110.

20 C.J.S. Counties § 172.

16-1510. Prior dispositions of property validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, such right, title estate and interest as is purported to be transferred by such county in and to the property described or covered.

History: En. Sec. 1, Ch. 111, L. 1961.

16-1511. Dispositions of property prior to 1967 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 247, L. 1967.

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CHAPTER 15—COUNTY LAND ADVISORY BOARD

Section

- 16-1512. Dispositions of property prior to 1969 validated.
16-1513. Dispositions of property prior to 1971 validated.
16-1514. Dispositions of property prior to 1973 validated.

16-1512. Dispositions of property prior to 1969 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 78, L. 1969.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and

all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

16-1513. Dispositions of property prior to 1971 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 96, L. 1971.

Title of Act

An act to validate and confirm sales or

1973 SUPPLEMENT

dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instruments of transfer or conveyance heretofore made or executed by any county, and

to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right title and interest of the county in and to the property described or covered.

16-1514. Dispositions of property prior to 1973 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 148, L. 1973.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all in-

struments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

CHAPTER 41

COUNTY PLANNING AND ZONING DISTRICTS

- Section 16-4101. Planning and zoning districts—commission—creation.
16-4102. Development pattern.
16-4103. Adoption of development district.
16-4104. Surveys and examinations—powers.
16-4105. Regulations—appeals—permits for construction.
16-4106. Effect of act upon powers of incorporated communities to plan adjacent areas.
16-4107. "District" defined.

16-4101. Planning and zoning districts—commission—creation. Whenever the public interest or convenience may require, and upon petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district, and to appoint a commission consisting of five (5) members. The commission is to consist of the three (3) county commissioners, the county surveyor and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses, and shall be residents of the county in which they serve. The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for one (1) year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business. The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board shall be paid from a levy of not to exceed one (1) mill on the taxable valuation of the real property within such district, provided that no such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to section 11-2702 (2)

History: En. Sec. 1, Ch. 151, L. 1953;
amd. Sec. 16, Ch. 273, L. 1971.

Amendments

1973 SUPPLEMENT

The 1971 amendment added the proviso to the last sentence; and made a minor change in phraseology.

History: En. Sec. 1, Ch. 151, L. 1953.

M 263, 267, 362 P 2d 1021, 1023; Doull v. Wohlsehinger, 139 M 274, 362 P 2d 542, 543.

Constitutionality

This chapter does not contravene section 1, article IV of the Montana constitution as an unlawful delegation of power, since sufficient guidelines are set out. City of Missoula v. Missoula County, 139 M 256, 362 P 2d 539, 542, explained in 139

Potition for Establishment

A board of county commissioners does not have the power to create a planning and zoning district and to make a survey in portions of the county in the absence of

a petition by sixty per cent of the freeholders. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 762. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Survey

A county-wide survey is unnecessary for the establishment of a planning and zoning district unless authorized by the requisite petition under this section. *Doull*

v. Wohlschlager, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Collateral References

Counties \Rightarrow 211½.

20 C.J.S. Counties § 49.

Zoning regulations as to privately owned parking places. 29 ALR 2d 867.

16-4102. Development pattern. For the purpose of furthering the health, safety and general welfare of the people of the county, the county planning and zoning commission hereby is empowered, and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district. Such development pattern, with the accompanying maps, plats, charts and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and with others of which it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, industries or callings, or within which the height and bulk of future buildings and the area of the yards, courts and other open spaces and the future uses of the land or buildings shall be limited and future building set backlines shall be established. No planning district or recommendations adopted under this act shall regulate lands used for grazing, horticulture, agriculture or for the growing of timber; providing that existing non-conforming uses may be continued, although not in conformity with such zoning regulations.

History: En. Sec. 2, Ch. 154, L. 1953.

Composition of District

District court was in error in holding that a planning and zoning district must comprise an area of forty acres none of which are used for grazing, horticulture, agriculture or the growing of timber, since section 16-4107, defining a district, makes no such distinction. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Construction

Since the legislature uses the word "district" in the plural in the second sentence of this section and in the singular in the first sentence, it must be assumed that the legislature knew the difference and intended the use of the singular when so used. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 762. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

The word "used" in the last sentence of this section is a verb used in a noun phrase as a participial adjective rather than in the past tense of the verb form. When a verb is so used it indicates a present rather than a past meaning. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758,

763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

County-Wide Survey

It is unnecessary to make a county-wide survey unless so authorized by the requisite petition under 16-4101. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Farm Lands

Lands used for grazing, horticulture, agriculture or the growing of timber at the time of survey are not thereafter exempt from regulation. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

The legislature intended under this section to preserve the identity of farm lands from the encroachment of expanding towns and cities, but only so long as they are so employed. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 761. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Maps and Plats

The need for maps and plats under this section would only seem to exist when the planning and zoning commission has di-

vided the district into separate areas within which it is permissible, and other areas within which it is not permissible to erect and maintain certain types of "industries, trades or callings." Such a provision is intended to provide notice where the regulations may vary from block to block and lot to lot. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Residential Units

The planning and zoning commission has complied with the provisions of this section requiring it "to make and adopt a development pattern for the physical and economic development of the planning and zoning district" when it provides for residential expansion and the protection of economic values by restricting the development to residential units. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

16-4103. Adoption of development district. Adoption by the planning and zoning commission of the development district, or any change therein, may be in whole or in part, but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption a public hearing shall have been held not less than fifteen (15) days after notice thereof shall have been posted in at least three (3) public places within the area affected. The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district, shall refer expressly to the maps, charts and descriptive matters forming the pattern or part thereof; provided that the board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953.

municipality to approval of subdivision map or plat. 11 ALR 2d 532.

Collateral References

Validity of conditions imposed by mu-

16-4103. Adoption of development district.

1973 SUPPLEMENT

Variance and Nonconforming Use Dis-
tinguished

District court decision limiting nonconforming use for mobile homes to six trailers and court order to remove trailers exceeding that number did not make the

question of a variance res judicata, and landowners were entitled to a hearing on the merits on their petition for variance. *Wheeler v. Armstrong*, — M —, 498 P 2d 300.

16-4104. Surveys and examinations—powers. The planning and zoning commission, and any of its members, officers and employees in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon. In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this act. All public officials, departments and agencies, having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: En. Sec. 4, Ch. 154, L. 1953.

16-4105. Regulations—appeals—permits for construction. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners, drafts of resolutions for the purpose of carrying out the development districts, or any part thereof, previously adopted by the commission, including zoning and land use regulations, the making of official maps and the preservation of the integrity thereof, and including procedure for appeals from decisions

made under the authority of such regulations, and regulations for the conservation of the natural resources of the county, and the board of county commissioners is hereby authorized to adopt such resolutions; provided that any person aggrieved by any decision of the commission or the board of county commissioners, may, within thirty (30) days after such decision or order, appeal to the district court in the county in which the property involved, is located. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration or enlargement of any building or structure otherwise subject to the provisions of this act, and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: En. Sec. 5, Ch. 154, L. 1953.

Appeals

An aggrieved party may appeal any decision of the county commissioners within thirty days after such decision was made to the district court. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 766. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Collateral References

Zoning regulations as affecting churches. 138 ALR 1287 and 74 ALR 2d 377.

Violation of zoning ordinance and regulation as affecting or creating liability for injuries or death. 31 ALR 2d 1169.

Zoning regulations as applied to schools,

colleges, universities, and the like. 36 ALR 2d 653.

Validity of zoning regulations with respect to uncertainty and indefiniteness of district boundary lines. 39 ALR 2d 766.

Attack on validity of zoning ordinance on ground of improper delegation of authority to board or officer. 58 ALR 2d 1083.

Applicability of zoning regulations to governmental projects or activities. 61 ALR 2d 979.

Zoning regulations as to shopping centers. 76 ALR 2d 1172.

Validity of zoning ordinance limiting use of land near or surrounding airport. 77 ALR 2d 1362.

16-4106. Effect of act upon powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this act except and until the board of county commissioners having jurisdiction over such adjacent area establish a planning commission, and adopt initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: En. Sec. 6, Ch. 154, L. 1953.

Collateral References

Standing of lot owner to challenge va-

lidity or regularity of zoning changes dealing with neighboring property. 37 ALR 2d 1143.

16-4107. "District" defined. For the purposes of this act the word "district" shall mean any area that consists of not less than forty (40) acres.

History: En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955.

Construction

A district under this section need not comprise an area of forty acres none of which are used for grazing, horticulture, agriculture or the growing of timber.

Doull v. Wohlschlager, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

This section contemplated districts which would be less than an entire county. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

TITLE 11—CITIES AND TOWNS 1974 SUPPLEMENT¹

CHAPTER 5—ALTERATION OF BOUNDARIES, EXCLUSION
AND INCLUSION OF TERRITORY

11-514. Title. The bill shall be entitled "The Planned Community Development Act of 1973."

History: En. 11-514 by Sec. 1, Ch. 364, L. 1974.

11-515. Purpose. It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana

system are in many cases discriminatory and are causing in many of the Montana cities indiscriminate growth patterns and forcing in many cases citizens of municipalities to be annexed without provision for adequate city services extended and provided for them. Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base. Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services. Therefore, it is the purpose of this act to develop a just and equitable system of adding to and increasing cities boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development and future annexations must consider these principles.

(3) Municipal boundaries should be extended, in accordance with legislative standards applicable throughout the state, to include such areas and to provide the high quality of governmental services needed for the public health, safety and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974.

11-516. Definitions. The following terms where used in this act have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any city or town under Montana law.

(3) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder.

• History: En. 11-516 by Sec. 3, Ch. 364, L. 1974.

11-517. Initiation of extension of corporate limits. The governing body of any municipality may extend the corporate limits of such municipi-

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pality under the procedure set forth in this act upon the initiation of the procedure by the board itself; or, whenever the resident freeholders situated outside the corporate boundaries of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the governing body of the municipality a petition bearing the signatures of fifty-one per cent (51%) of the resident freeholders in the territory sought to be annexed, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in section 7 [11-520] of this act. If the municipal governing body fails to act within sixty (60) days the petitioners may appeal to the district court under the procedure set down in section 9 [11-522] of this act.

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974.

11-518. Plans to provide services. A municipality exercising authority under this act shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in section 7 [11-520] of this act, prepare a report setting forth its plans to provide services to such area. This report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

- (a) the present and proposed boundaries of the municipality;
- (b) the present streets, major truck water mains, sewer interceptors and outfalls and other utility lines, and the proposed extension of such streets and utility lines as required in subsection (3) of this section; and
- (c) the general land-use pattern in the areas to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of section 6 [11-519] of this act.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

(a) provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of five (5) years into the future showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city;

(b) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(c) provide for future extension of streets and of major trunk water mains, sewer outfall lines and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(d) if extension of streets and water, sewer or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines; and

(e) a method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. Included within this plan must be a methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over fifty per cent (50%) of those resident freeholders in the section or sections to be annexed in such election, the area shall not be annexed. If the area is serviced currently by adequate water and sewage services, streets, curb and gutters, and no capital improvements are needed to provide adequate services stipulated by this section, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly police protection, fire protection, garbage collection, street and street maintenance services, as well as continued utility service. In this annexation plan it must be clearly stated that the entire municipality tends to share the tax burden for these services. And if so, the area may be annexed without a bond issue under the provisions of this act.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974.

11-519. Standards to be met before annexation can occur. (1) A municipal governing body may extend the municipal corporate limits to include any area which meets the general standards of subsection (2) of this section.

(2) The total area to be annexed must meet the following standards:

(a) it must be contiguous to the municipalities boundaries at the time the annexation proceeding is begun;

(b) no part of the area shall be included within the boundary of another incorporated municipality;

(c) it must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 11, chapter 38, R. C. M. 1947; and

(d) no part of the area shall be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of chapter 20, Title 11, R. C. M. 1947, provided that such fire district was originally organized at least ten (10) years prior to the inception of such attempted annexation.

(3) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than two hundred (200) feet beyond the right of way of the street.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974.

11-520. Resolution of intention to annex—public hearing notice—action by governing body after hearing. (1) The governing body of any

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municipality desiring to annex territory under the provisions of this act shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than thirty (30) days and not more than sixty (60) days following passage of the resolution.

(2) The notice of public hearing shall:

- (a) fix the date, hour and place of the public hearing;
- (b) describe clearly the boundaries of the area under consideration;
- (c) state that the report required in section 5 [11-518] of this act will be available in the office of the municipal official designated by the governing body at least fourteen (14) days prior to the date of the public hearing.

Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least four (4) successive weeks prior to the date of the hearing. The date of the last publication shall not be more than seven (7) days preceding the date of the public hearing. If there be no such newspaper, the municipality shall post the notice in at least five (5) public places within the municipality and at least five (5) public places in the area to be annexed for thirty (30) days prior to the date of public hearing.

(3) At least fourteen (14) days before the date of the public hearing, the governing body shall approve the report provided for in section 5 [11-518] of this act, and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

(4) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in section 5 [11-518] of this act. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

(5) The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by section 5 [11-518] of this act and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of section 5 [11-518]. At any regular or special meeting held no sooner than seven (7) days following the public hearing and no later than sixty (60) days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing, which meets the requirements of section 6 [11-519] of this act, and which the governing body has concluded should be annexed. The ordinance shall:

- (a) contain specific findings showing that the area to be annexed meets the requirements of section 6 [11-519] of this act. The external boundaries of the area to be annexed shall be described by metes and bounds;

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(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by section 5 [11-518] of this act; and

(c) fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve (12) months from the date of passage of the ordinance.

(6) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer or other utilities or improvements, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five (5) years after the effective date of annexation.

(7) If a municipality is considering the annexation of two (2) or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceeding under authority of this act for the annexation of such areas.

(8) For a period of twenty (20) days after the public hearing provided for in section 7 [11-520] of this act the governing body of the municipality shall receive expressions of approval or disapproval in writing, of the proposed annexation from resident freeholders of the territory proposed to be annexed. If a majority of the said resident freeholders, in writing, disapprove the proposed annexation, no further proceedings under this act shall be had, relating to the territory proposed to be annexed or any part thereof, for a period of one (1) year from the date of such disapproval.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974.

11-521. Annexation order. The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed, is situated. From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete and henceforth such annexed territory or territories shall be a part of the municipal corporation, and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. 11-521 by Sec. 8, Ch. 364, L. 1974.

11-522. Right to court review when area annexed. (1) Within thirty (30) days following the passage of an annexation ordinance under

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authority of this act, either a majority of the resident freeholders in the territory or the owners of more than seventy-five per cent (75%) in assessed valuation of the real estate in the territory who shall believe that he or they will suffer material injury, by reason of the failure of the municipal governing body to comply with the procedure set forth in this act or to meet the requirements set forth in section 6 [11-519] of this act as they apply to his or their property, may file a petition in the district court of the district in which the municipality is located, seeking review of the action of the governing board and serve a copy of the petition on the municipality in the manner of service of civil process.

(2) If two (2) or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing.

(3) The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

(a) that the statutory procedure was not followed;

(b) that the provisions of section 5 [11-518] or section 6 [11-519] were not met; or

(c) the court may affirm the action of the governing body without change, or it may:

(i) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(ii) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of section 6 [11-519]; but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(iii) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of section 5 [11-518] of this act are satisfied.

If any municipality fails to take action in accordance with the court's instructions upon remand within three (3) months from receipt of such instructions, the court may in its discretion extend the time for compliance.

(4) Any party to the review proceedings, including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court; provided, that the lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of

the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

(5) All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful, until and unless they are modified or set aside by the governing body or upon review.

(6) No decisions of the governing body shall be subject to collateral attack and may be reviewed or modified only in the manner provided herein.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974.

11-523. Right to court review when area not annexed. After the resident freeholders have properly petitioned the governing body of the municipality and the body has failed to pass a resolution of intent to annex within sixty (60) days, the petitioners may file a complaint and a duplicate copy of the petition in the district court of the proper jurisdiction stating the reason why the proposed annexation should take place. The municipality shall be designated party defendant in the cause and shall be required to appear and answer as in other cases. The court, without a jury, shall hear and determine the questions presented in the petition. If the evidence establishes that:

(1) essential municipal services and facilities are not available to the inhabitants of such territory;

(2) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(3) at least one-eighth (1/8) of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality; the court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state.

If, however, the evidence does not establish all three (3) of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

History: En. 11-523 by Sec. 10, Ch. 364, L. 1974.

11-524. Certain expenditures authorized. Municipalities initiating annexations under the provisions of this act are authorized to make expenditures for surveys required to describe the property under consideration, or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines and other capital facilities in the annexed area.

History: En. 11-524 by Sec. 11, Ch. 364, L. 1974.

11-525. Severability and construction. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

In so far as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The method of annexation authorized in this act shall be construed as supplemental to and independent from other methods of annexation authorized by state law.

History: En. 11-525 by Sec. 12, Ch. 364, L. 1974.

CHAPTER 22

SPECIAL IMPROVEMENT DISTRICTS

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- 11-2287. Designation of district.
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11-2201. (5225) Special improvements—powers of city council. All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, alleys, places, or courts, for the purposes of this chapter, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to acquire private property for right of way, and to order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

Further, that in addition to the powers heretofore granted, when the public interest or convenience requires, the governing body of a municipality may:

- (1) Establish pedestrian malls.
- (2) Prohibit, in whole or in part, vehicular traffic on a pedestrian mall.
- (3) Pay, from general funds of the municipality or other available moneys or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall, provided that the resolution of intention contains a statement that an assessment will be levied to pay the whole or a stated portion of such damages, if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall.
- (4) Construct on public streets which have been or will be established as a pedestrian mall improvements of any kind or nature necessary or convenient to the operation of such streets as a pedestrian mall, including but not limited to paving, sidewalks, curbs, sewers, covered walkways or areas, air conditioning, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, decorative structures, benches, rest rooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works or improvements necessary or convenient to serve members of the public using such pedestrian mall including the reconstruction or relocation of existing municipally owned works, improvements or facilities on such streets. Such improvements or structures may be attached to abutting private buildings or structures, provided that such improvements or structures shall be located on public property.

(a) It is further provided that in addition to the purposes for which an improvement district may be formed, as heretofore set forth, an im-

provement district may be formed for the sole purpose of the operation, maintenance, repair and improvements of pedestrian malls, off-street parking facilities, and parkings and parkways.

(b) Subject to the powers granted and the limitations contained in this section, the powers and duties of the municipality and the procedure to be followed shall be as provided in this article for other types of special improvement districts.

(c) If a petition for the formation of an improvement district under the provisions of this section is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of section 11-2204, and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions, without the necessity of the publication and posting of the resolution of intention provided for in section 11-2204.

(d) The governing body shall make annual statements and estimates of the expenses of the district, which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district, shall publish notice thereof, shall have hearings thereon and adopt them at the times and in the manners provided for incorporated cities and towns by the applicable portions of sections 11-2204 and 11-2206. The governing body, on or before the second Monday in August of each year, shall fix, levy and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes shall be applicable to the district taxes provided for under this section.

(e) An improvement district formed for the purposes of establishing a pedestrian mall or off-street parking may be financed in accordance with the provisions of section 11-2214, R. C. M. 1947, and/or in accordance with the methods of financing set forth for the construction of water or sewer systems as set forth in section 11-2218, R. C. M. 1947.

(5) Create special lighting districts on any street or streets or public highway therein or portions thereof for the purposes of lighting such street or streets or public highway and is hereby empowered to assess such costs for installation and maintenance to property abutting thereto and to collect such costs by special assessment against said property.

Further, that in addition to the powers heretofore granted, the city or town council is empowered to make assessments in the manner provided in section 11-2245 hereafter on property abutting said street or highway and lying outside the boundaries of said city or town, so long as that portion of the street or public highway to be lighted is adjacent to the boundary line of said city or town or lies partially within said city or town or extends from one point within said city or town to another point within said city or town.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R. C. M. 1921; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R. C. M. 1921; amd. Sec. 1, Ch. 136, L. 1967.

NOTE.—For history of early improvement district acts, see *Stadler v. City of Helena*, 46 M 128, 127 P 454. Sections 3367 to 3412, Revised Codes 1907 (except sections 3368 and 3390 to 3395), were repealed by chapter 89, Laws of 1913, which is here given as amended.

Street Improvements

Sections 11-2201 to 11-2281 provide the method for carrying out the powers granted in section 11-906. *Bietrich v. City of Deer Lodge*, 124 M 8, 218 P 2d 708.

A city may create a special improve-

Amendments

The 1971 amendment added subdivision (5); and made a minor change in style.

ment district for street improvements where the street is also a part of a state highway and, in such instance, the contracts for the work must be awarded by the state highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

References

Hinzeman v. City of Deer Lodge, 58 M 369, 375, 193 P 395; *Aiken v. City of Glendive*, 60 M 1, 2, 197 P 1003; *Evans v. City of Helena*, 60 M 577, 588, 199 P 445; *Murray v. City of Helena*, 65 M 485, 211 P 197; *Rush v. Grandy*, 66 M 222, 226, 213 P 242; *Thomas v. City of Missoula*, 70 M 478, 483, 226 P 213; *Stanley v. Jeffries*, 86 M 114, 130, 284 P 134.

1973 SUPPLEMENT

Collateral References

Municipal Corporations—269 (3).
63 C.J.S. Municipal Corporations § 1046.
38 Am. Jur. 246, Municipal Corporations,
§ 559 et seq.

Leasehold estate in exempt property as subject of tax or special assessment. 23 ALR 245.

Public school property as subject to assessment for local improvements. 36 ALR 1540.

Necessity that additional assessment in proceeding for local improvement precede incurring liability in excess of the original assessment. 63 ALR 1179.

Lump-sum assessment for taxes or public improvement against property owned by cotenants in undivided shares. 80 ALR 862.

Public property as subject to special assessment for improvement. 90 ALR 1137.

Manner of enforcing special assessments against public property. 95 ALR 689 and 150 ALR 1394.

Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid. 96 ALR 1275.

Assessment or taxation of property for use, as distinguished from construction, maintenance, repair, or operation, of public improvement. 127 ALR 1374.

Construction or improvement of sewers as a local or district improvement within provisions authorizing or requiring special assessments or other specified means of defraying expense. 134 ALR 895.

Limitation of action on or to compel taxation for improvement bonds. 38 ALR 2d 930.

11-2202. (5226) Special improvement districts—placing wires underground—cost per lineal foot. (1) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to create special improvement districts, for building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and for building and constructing municipal swimming pools and other recreation facilities, and order the whole, or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city, graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, surfaced or resurfaced, oiled or recoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings, including the planting of grassplots and setting out of trees; sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances; waterworks, water mains, and extensions of water mains; pipes, hydrants, hose connections for irrigating purposes; appliances for fire protection, tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water; the opening of streets, avenues, and alleys; the planting of trees thereon; and to maintain, preserve and care for any and all of the improvements herein mentioned; and the construction or reconstruction in, over, or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances; pipes, hose connections for irrigating, hydrants and appliances for fire protection; and breakwaters, levees, retaining walls and bulkheads; walls of rock or other material to

protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water; and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, or places or public ways, or property, or right of way of such city. The city council is also hereby authorized to create a district as hereinafter specified, for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

(2) It is further provided that the council shall have the same jurisdiction and powers as in this section above provided, to (before doing any of the work mentioned in this act) require any public service corporation, or company, firm, or person occupying such streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, place in an underground conduit in such manner as may be directed by the city council, all wires, electric conduits, telephone, telegraph, power, or power transmission lines, or appurtenances thereto, or appliances owned, held, or enjoyed in connection therewith; provided, however, that the whole cost so assessed shall at no time exceed the sum of one dollar and fifty cents per lineal foot, plus the cost of the pipe so laid of the entire length of the water mains laid in such district.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965.

Limitation of Cost

The limitation of \$1.50 per lineal foot placed upon municipal improvements by this section has no application to street grading, draining, paving or curbing and gutter work. *Reeve v. City of Billings*, 57 M 552, 189 P 768.

Paying for Condemned Property outside City Limits

In the absence of such a provision as contained in this section, the power of a municipality to create a special improvement district in a city for the construction of a project to protect city property from overflows would be implied on grounds of special necessity, and in such case, as well as where the power is expressly conferred, property in the special improvement district may properly be assessed for the purpose of paying for condemned property lying outside the city limits. *Hansen v. City of Havre*, 112 M 207, 215, 114 P 24 1053.

Powers of City Council Limited

The statutes of this state relating to the creation of special improvement districts not only qualify and limit the powers which the city council may exercise, but they define with particularity the mode in which the restricted authority may be

used, and compliance with their provisions is the sine qua non to the creation of a special improvement district for making improvements the expense of which is to be a charge against the property included. *Shapard v. City of Missoula*, 49 M 269, 279, 141 P 541; *Cooper v. City of Bozeman*, 51 M 277, 283, 169 P 801; *Johnston v. City of Hardin*, 55 M 574, 581, 179 P 821.

Right To Attack Validity of Creation of District

Where an owner joined in a petition for the creation of a special improvement district, and thereafter, in creating it, a large part of the property described therein was excluded by the city council, the petitioner was not estopped to subsequently attack the validity of the creation by the fact that he joined in the petition. *City of Lewistown v. Warren*, 52 M 356, 357, 157 P 954.

References

Hawley v. City of Butte, 53 M 411, 412, 164 P 305; *Chicago, Milwaukee & St. Paul Ry. Co. v. Poland*, 54 M 497, 501, 172 P 511; *Eby v. City of Lewistown*, 55 M 113, 117, 173 P 1163; *Aiken v. City of Glendive*, 60 M 1, 2, 6, 197 P 1003; *Evans v. City of Helena*, 60 M 577, 588, 199 P 445; *Rush v. Grandy*, 66 M 222, 226, 213 P 242; *Ricker v. City of Helena*, 68 M 350, 358, 248 P 1019; *Thomas v. City of Missoula*, 70 M 478, 483, 226 P 213; *Stanley v. Jeffries*, 86 M 111, 130, 281 P 131; *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061; *Lumbermen's Trust*

Co. v. Town of Ryegate, 50 F 2d 219, 61 F 2d 14.

Collateral References

Municipal Corporations 269 (1-4), 450 (1).

63 C.J.S. Municipal Corporations §§ 1042-1047, 1359 et seq.

38 Am. Jur. 246, Municipal Corporations, § 559 et seq.

Power to impose cost of maintenance for operation of street lighting system on local improvement district. 60 ALR 272.

Underground conduits for electric wires as local improvements supporting special assessments. 66 ALR 1389.

Constitutionality of classification of streets as regards source of payment for improvements. 127 ALR 1090.

Construction or improvement of sewers as a local or district improvement within provisions authorizing or requiring special assessments or other specified means of defraying expense. 134 ALR 895.

DECISIONS UNDER FORMER LAW

Constitutionality

Laws providing for the creation of special improvement districts, and imposing a tax by way of assessment upon the property legislatively determined to be benefited, are not open to the objection that they deprive the owner of his property without due process of law. *McMillan v. City of Butte*, 30 M 220, 225, 76 P 203.

In the absence of proof that the burden imposed on a property owner by a municipal assessment is altogether out of proportion to the benefit actually accruing to the property, he cannot assert that his property is thereby taken without compensation. *McMillan v. City of Butte*, 30 M 220, 225, 76 P 203.

Assessments for special municipal improvements, such as the construction of sewers or the building of sidewalks, are not taxes, and constitutional and statutory provisions exempting property from taxation have no application to such assessments. *City of Kalispell v. School District No. 5*, 45 M 221, 226, 122 P 742.

Bond Issues—Payment

Where a special improvement district was established under this section and bonds were issued "payable from the collection of the special tax or assessment which is a lien against the real estate within said improvement district," the bonds were not a general obligation of the town and the town could not be compelled to redeem the bonds from a water fund made up of water rentals from water users, even though the town may have had authority to make payments from such fund. *State ex rel. Truax v. Town of Lima*, 121 M 152, 193 P 2d 1003, 1010.

Federal Property

Where property belonging to the federal government abuts on a street for the purpose of paving which a special improvement district is created, the city may devote its street fund or any money in its treasury not otherwise appropriated to the payment of that portion of the improvement which, but for its exemption from such imposition, would be properly

assessable against such property. *Ford v. City of Great Falls*, 46 M 292, 308, 127 P 1004.

The constitutional provision that a state shall not impose any taxes upon property therein belonging to the United States includes special assessments for street improvements. *Ford v. City of Great Falls*, 46 M 292, 308, 127 P 1004.

Where streets are to be improved, the fact that property, exempt from special assessment, such as that of the federal government and its instrumentalities, lies on one side of one of the streets is no obstacle to the city's proceeding with the improvement of that street. *Ford v. City of Great Falls*, 46 M 292, 308, 127 P 1004.

Legislative Declaration

A law providing for the creation of special improvement districts is a legislative declaration that all the property in the proposed district is benefited by the improvement, and to the same extent. *McMillan v. City of Butte*, 30 M 220, 224, 76 P 203.

School District Property

The property of a school district, devoted exclusively to public school purposes, is, in the absence of express constitutional or statutory exemption, liable for the payment of assessments made for special municipal improvements. *City of Kalispell v. School District No. 5*, 45 M 221, 230, 122 P 742.

Theory of Act

The whole theory of local taxation or assessments is that the improvements for which they are levied afford a remuneration in the way of benefits. *Power v. City of Helena*, 43 M 336, 341, 116 P 415.

With respect to special improvements, the "superficial area" rule is the rule of this state; it amounts to a legislative declaration that all property in a proposed district is, presumptively, equally benefited by the improvement contemplated. *Mansur v. City of Polson*, 45 M 585, 595, 125 P 1002.

11-2203. (5226.1) Connections with water and gas pipes. The city or town council shall have power to require connections from gas pipes, water pipes, steam heating pipes, and sewers to the curb line of the adjacent property to be made before the permanent improvement of the streets whereon they are located, and to regulate the making of such connection on the streets already improved, or on unimproved streets; and in case the owners of the property on such streets shall fail to make such connections within the time fixed by the council, they may cause such connections to be made, and shall assess against the property in front of which said connections are made the entire cost and expense thereof. All assessments levied under the provisions of this section shall be enforced and collected in the same manner as other special assessments provided for in article V of this chapter, and amendments thereof, and all such assessments shall be a lien against the property.

History: En. Sec. 2, p. 213, L. 1897; re-en. Sec. 3368, Rev. C. 1907; re-en. Sec. 5226a, R. C. M. 1921.

NOTE.—From the context the above reference to "article V of this chapter" would seem to allude to article 5 of chapter 3 of the Political Code of 1895, which in these codes is sections 84-4715 to 84-4737.

References

Lumbermen's Trust Co. v. Town of Ryegate, 50 F 2d 219, 61 F 2d 14.

Collateral References

Gas⌞9; Steam⌞5; Municipal Corporations⌞293 (1), 294(1); Waters and Water Courses⌞194.

38 C.J.S. Gas §§ 3, 12, 20; 63 C.J.S. Municipal Corporations §§ 1092-1096.

11-2204. (5227) Resolution of intention—notice—materials. (1) Before creating any special improvement district for the purpose of making any of the improvements, or acquiring any private property for any purpose authorized by this act, the city council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements which are to be made, and an approximate estimate of the cost thereof; provided, however, that when any improvement is to be made in paving, the city or town council may in describing the general character of the same describe several kinds of paving.

(2) Upon having passed such resolution the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having real property within the proposed district listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement or the improvements so proposed to be made, and state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such dis-

trict; and said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this act, and any number of streets and rights of way, or portions thereof, and it may except therefrom any of said work, already done, upon a street to the official grade.

(3) Where the special improvement contemplated is the paving of a street in which car tracks have been constructed, the city shall have the power and authority to order the general character of the material between the rails and one foot on each side of the rails to be of a different kind from that used in the remainder of the street; providing that the general character of the material to be used between the car tracks and one foot on each side of the rails be described in the resolution of intention, in the same manner as the general character of the material used for the rest of the contemplated pavement.

(4) The lots or portions of lots fronting upon said excepted work, already done, shall not be included in the assessment for the class of work from which the exception is made; provided, that this shall not be construed so as to affect the special provisions as to grading contained in section 11-2214 of this code.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 112, L. 1915; re-en. Sec. 5227, R. C. M. 1921; amd. Sec. 1, Ch. 261, L. 1959.

Boundary

Under this section, a city has the power to fix the boundary of a special improvement district at any distance from the front line of a street and is not required to include the whole platted area of each lot. *Ricker v. City of Helena*, 68 M 350, 360, 218 P 1049.

Construction of Section

The words "approximate estimate" should not be construed liberally. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 814, 815.

Contracts May Not Exceed Approximate Estimate

The amount of the contract for improvements cannot legally exceed by seven and one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811.

Departure from Resolution

In its resolution of intention to create a special improvement district, the city council must describe the character and nature of the contemplated improvements with sufficient particularity to advise the taxpayer affected, and the improvements to be made must correspond substantially

with those set forth in the resolution, and no material change or departure therefrom can be made. *Evans v. City of Helena*, 60 M 577, 588, 199 P 445.

Under a resolution of intention to create a special improvement district for the purpose of paving streets, with the necessary excavations, cutting, filling, etc., and "incidental work," held that defendant city was properly enjoined from entering into a contract the provisions of which departed substantially from the purposes set forth in the resolution, in that they included reduction in the street widths and the construction of new parking, curbing and storm sewers, each of which constitutes a distinct city improvement under this section, and none of which was therefore subject to inclusion under the term "incidental work." *Evans v. City of Helena*, 60 M 577, 588, 199 P 445.

Description of Boundaries

By a resolution to create a special improvement district described as being bounded by certain lots, such lots were not incorporated in, but excluded from, the proposed district. *City of Lewistown v. Warr*, 52 M 353, 355, 157 P 953.

Discretion of Council

The city council as a special tribunal to conduct the hearing is clothed with limited powers only, and no presumption in favor of its jurisdiction will be indulged. The statute measures its authority, and compliance with the terms of the statute is a condition precedent to the right to

oct. *Johnston v. City of Hardin*, 55 M 574, 579, 179 P 824.

In an action to set aside the proceedings of a city council had in the creation of a special street improvement district and to enjoin the carrying out of a paving contract entered into, on the grounds that the city had joined in one district property abutting on several streets, that the character of work to be done on one street was different from that to be done on others, and that property on several streets would not be benefited by the paving on another, proceedings reviewed and held, in view of the power lodged in the city council by this section to include in one district and in one contract any number of streets, any kind of work, etc., that the council did not abuse its discretion. *Ricker v. City of Helena*, 68 M 350, 360, 218 P 1049.

District Sewers

District sewers are such as accomplish the purpose of a sewer system without other or outside aid, except as they receive by the carrying off of their discharges by the main trunk line—the public sewer; such sewers may be constructed by the creation of special improvement districts, under this section, and paid for by assessing the cost of the improvement against the property within the districts created. *Crutchfield v. Nash*, 84 M 556, 563, 276 P 938.

Failure To Mail Notice

A special improvement district for the purpose of raising funds was void where one of the property owners affected was not mailed a notice. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058.

Faulty Proceedings in Creating District

Where no work has been done under contracts for the installation of a special improvement, or warrants issued, the claim that a liberal and indulgent view of faulty proceedings in creating the district should be taken has no merit. *Cooper v. City of Hoze-man*, 54 M 277, 284, 160 P 801.

Necessary Steps To Create Districts

The successive steps necessary to be taken by a city council in the creation of a special improvement district are: (1) The adoption of a resolution of intention; (2) the service of the required notice; (3) a hearing and determination against protests; and (4) the passage of a resolution creating the district, the first three of which are jurisdictional, and a failure to take any one of these is fatal to the proceedings. *Shapard v. City of Missoula*, 49 M 269, 278, 141 P 544; *Johnson v. City of Hardin*, 55 M 574, 579, 179 P 824.

Newspaper Publishing Five Days a Week Is a Daily

The provision "must be published for five days in a daily newspaper," was met by publication for five consecutive days in a paper which constituted all its publications for a week; it having been held that a newspaper published five days in the week is a daily in the popular sense. *Hansen v. City of Havre*, 112 M 207, 212, 114 P 2d 1053.

Notice

Publication of a notice of intention to create a special improvement district which contained the proper reference to time and place for hearing objections to its final adoption was sufficient. *Allen v. City of Butte*, 55 M 205, 207, 175 P 595.

The caption of a notice is no part of the notice itself, and cannot be looked to to supply any deficiency in the notice. *Johnston v. City of Hardin*, 55 M 574, 581, 179 P 824.

In the absence of the statutory notice of the city council's intention to create a special improvement district, plaintiff property owner was not called upon to act, an inference deducible from his complaint that he had actual knowledge that his property was to be included in the proposed district being insufficient. *Johnston v. City of Hardin*, 55 M 574, 581, 179 P 824.

A resolution passed by the town council reciting the creation of an improvement district and that the resolution should be deemed one of intention to create, and creating it, followed by a description of its boundaries and of the character of the proposed improvements, with an estimate of the cost, etc., and that objections to its creation and the final adoption of the resolution would be heard in a certain place at a given time, held to have been in substantial compliance with statutory provisions. *Harvey v. Town of Townsend*, 57 M 407, 188 P 897.

Failure of the notice mentioned in this section to refer to the resolution for a description of boundaries is insufficient to vitiate the proceedings. *Harvey v. Town of Townsend*, 57 M 407, 188 P 897.

Until there is service of notice in strict compliance with the statute, no jurisdiction would attach to the municipality. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058.

Notice of the resolution of intention given by city to landowners was not sufficient where it did not contain an "approximate estimate" of the cost of improvements, the original estimate having been increased by seven and one-half per cent. *Koich v. City of Helena*, 132 M 191, 315 P 2d 811, 816.

The landowner whose property is affected by the special improvement district

must be given notice of the intention of the city's intent to create one. The notice must be sufficiently definite to apprise the landowner of the extent, nature and cost of the various improvements proposed. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 814.

Parties who have either received notice or waived it by appearing to protest may not take advantage of the failure of notice to other parties who have neither protested nor appeared as parties to the suit. *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523, explained in 140 M 211, 216, 369 P 2d 803.

This section does not require the city clerk to mail copies of the required notice to persons who are neither record owners nor personally known owners of an interest in property in the district, since they have been careless in failing to record their ownership. *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523, explained in 140 M 211, 216, 369 P 2d 803.

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its establishment on the ground of defective publication of notice. *Guffey v. City of Helena*, 140 M 211, 369 P 2d 803, 806.

Public Hearing

The statute contemplates a public hearing where the various objections made to the resolution of intention may be aired before actual work on the project has commenced. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

Purpose of Resolution

Notification is the prime purpose of the statute so that taxpayers will not be burdened with some improvement which they do not want, cannot afford, or do not need. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

The essential purpose of a resolution of intention is to: (1) apprise the taxpayers that the city intends to propose a special improvement district; (2) what area will be encompassed in the district; (3) what type and character of improvements will be included within the district; and (4) the cost of the improvements to be made. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

Sufficiency of Resolution

Though a mere informality in the resolution of intention to create an improvement district would not have rendered the effort of the city council to acquire jurisdiction nugatory, if the subsequent steps had been pursued in conformity with the statute, the proceeding was abortive where a resolution of intention was deemed sufficient to bring about the creation of the district.

Shapard v. City of Missoula, 49 M 269, 280, 111 P 541. Compare *Cooper v. City of Bozeman*, 54 M 277, 283, 169 P 801.

The resolution of intention is the primary step to be taken in every instance and is the basis of the whole proceeding, the omission of which is fatal and renders all the subsequent proceedings nugatory. *Shapard v. City of Missoula*, 49 M 269, 279, 111 P 544.

Proceedings for the imposition of a special improvement tax are in invitum, and before property can be held subject to the burden, it must be described with sufficient certainty that the owner cannot be misled; it being the intention of the statute that the resolution of intention shall contain a description of the proposed district by a line which marks its exterior boundaries. *City of Lewistown v. Warr*, 52 M 353, 355, 157 P 953.

Before a special improvement district can be created, the city council must pass a resolution of intention to do so, give notice of its passage, etc. Where the council, in an endeavor to create such a district, passed a resolution which proclaimed the creation of the district and an intention to assess the property liable for the cost of the improvement, the proceedings were void in limine for want of a proper resolution of intention. *Cooper v. City of Bozeman*, 54 M 277, 282, 169 P 801.

Failure to pass a proper resolution of intention to create a special improvement district cannot be corrected by subsequent interpretation at the hands of the council, to the effect that the resolution passed was meant to operate as one of intention. *Cooper v. City of Bozeman*, 54 M 277, 282, 169 P 801.

Where a resolution of intention to create a special improvement district described the boundaries of an entirely different district from that referred to in the notice served upon the owner of property affected, the city council did not acquire jurisdiction to proceed with the improvement. *Johnston v. City of Hardin*, 55 M 574, 580, 179 P 821.

A resolution of intention to create a special improvement district, the title of which stated that it was a "resolution of intention," etc., the body of which substantially contained the recitals required by statute and advised the taxpayers of the time and place where their objections to its creation would be heard, was sufficient as against the objection that in it the city council had not declared its intention to create it. *Aiken v. City of Glendive*, 60 M 1, 2, 197 P 1003.

Besides those requirements enumerated in subsection (1) of this section, the city commission must take two additional steps under section 11-2205 to have a valid resolution of intention for an "extended" dis-

trict. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 162.

Description contained in resolution of intention to establish special improvement district for purpose of raising funds to pay for water system and improvement held sufficient. Improvement was described as the construction of pipes, hydrants, and hose connections for irrigating appliances and fire protection which were to be installed upon and along certain designated streets, so that without reference to plans or specifications subsequently filed, the length of the pipe was fairly disclosed by the resolutions. *Lumbermen's Trust Co. v. Town of Ryegate*, 61 F 2d 14.

Where improvement was amply covered by general description contained in resolution of intention, that waterworks were to be constructed outside of special improvement district for purpose of furnishing water for pipes laid in district held

immaterial, so far as concerns description of work chargeable to district. *Lumbermen's Trust Co. v. Town of Ryegate*, 61 F 2d 14.

References

Hawley v. City of Butte, 53 M 411, 412, 164 P 305; *Almas v. City of Havre*, 70 M 33, 35, 223 P 896; *Thomas v. City of Missoula*, 70 M 478, 483, 226 P 213; *Cyr v. City of Missoula*, 135 M 94, 337 P 2d 365, 366; *Lumbermen's Trust Co. v. Town of Ryegate*, 50 F 2d 219.

Collateral References

48 Am. Jur. 693, Special or Local Assessments, § 151 et seq.

Scope and import of term "owner" with respect to giving notice of making of public improvement. 95 ALR 1085, 1091.

DECISIONS UNDER FORMER LAW

Assessment upon Superficial Area

A resolution providing that the cost of a special street improvement, comprising principal as well as side streets, should be paid for by the levy of an assessment based upon the "superficial area" rule, was not void as inequitable, in that under it owners of inside lots were required to bear the same proportion of expense as owners of corner lots of the same area, although the benefits to accrue to the former are disproportionate to those received by the latter. *Mansur v. City of Polson*, 45 M 585, 595, 125 P 1002, approving *McMillan v. City of Butte*, 30 M 220, 76 P 203.

Departure from Resolution

One who charges that a contemplated municipal improvement has been materially and substantially changed by the city council from the original plan as evidenced by the resolution authorizing it, has the burden of proving the materiality of the change. *Mansur v. City of Polson*, 45 M 585, 594, 125 P 1002.

Notice

The contents of the resolution, in so far as they relate to notice of what improvements are contemplated, are for the legislature to dictate, and so long as a reasonably comprehensive notice is provided for, the courts have no power to declare it insufficient, and a detailed description of the work intended to be done is unnecessary. *Mansur v. City of Polson*, 45 M 585, 595, 125 P 1002.

Objection to Proposed Improvement

To make the complaint of a property holder asking a court of equity to be relieved from the payment of a special improvement tax levied on his property for the purpose of defraying the cost of the construction of a storm sewer on the alleged ground that his property was so situated that it could not be benefited by the sewer, proof against a general demurrer, it must set forth that plaintiff appeared at the time and place designated in the resolution of the council for hearing objections to the proposed improvement, and that his protest was ignored; otherwise, after the improvement is made and warrants issued in payment thereof, he is estopped upon the face of his pleading. *Power v. City of Helena*, 43 M 336, 342, 116 P 415.

Sufficiency of Resolution

Where a certain lot was assessed for municipal improvements for its entire area, the fact that only one-half of such lot was included in the description in the resolution creating the assessment district was immaterial. *McMillan v. City of Butte*, 30 M 220, 227, 76 P 203.

While a city council may not so change the nature of a special street improvement set forth in the resolution of intention as to be materially and substantially different from that authorized, and the cost of the same increased in proportion, work which substantially follows that outlined in the resolution, though omitting one feature of the contemplated improvement, is not open to complaint in this respect. *Mansur v. City of Polson*, 45 M 585, 594, 125 P 1002.

11-2205. (5228) Assessment of extended district including lots not fronting on improvement. Whenever the contemplated work of improve-

ment, in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimates furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed, if assessed upon the lots or lands fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment roll whereon it was assessed for taxes for municipal purposes, the city council may make the expenses of such work or improvement chargeable upon an extended district and which may include other lots not fronting on the improvement, and which the said city council shall, in its resolution of intention, declare to be the district benefited by said work or improvements and to be assessed to pay the costs and expenses thereof.

History: En. Sec. 4, Ch. 89, L. 1913; re-en. Sec. 5228, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1923; amd. Sec. 1, Ch. 150, L. 1929.

Method of Protest against Assessment

Where the language used by the city in its resolution of intention described an extended improvement district within the provisions of this section, the city was precluded by sections 11-2214 and 11-2206 (2) from considering protests or assessments on the lineal frontage basis. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Public Benefit

In an action to recover improvement taxes paid under protest, held that, this section not so providing, a resolution of intention to create an extended improvement district including lots not fronting on the improvement, for the purpose of installing water mains and fire protection apparatus, need not recite that the contemplated work was of more than local or ordinary public benefit, the adoption of the resolution being a sufficient finding that in the opinion of the city council the proposed improvement was of that character. *Almas v. City of Havre*, 70 M 33, 223 P 896.

Purpose of Assessment

Where a district was created for the purpose of paying for improvements at intersections as authorized by this section and another district was created under section 11-2214 to defray the cost of the street where it abuts on privately owned property there was in no sense double taxation. The assessments were for different purposes. One assessment was to raise money to defray the cost of the

intersections and the other to defray the cost of the street where it abuts on privately owned property. *Bidlingmeyer v. City of Deer Lodge*, 128 M 292, 274 P 2d 821, 823.

Resolution of Intention

Only the second requirement of this section, that the extended improvement district to be created to be the district benefited by said work or improvements, and to be assessed to pay the costs and expenses thereof, need be stated in the resolution of intention, and where it is not, the resolution of intention is invalid. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Where the resolution of intention was incomplete, due to the failure of the city commission to comply with the requirements of this section, the city did not obtain jurisdiction to create the improvements regardless of the sufficiency of the protests under section 11-2206. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Sufficiency of Resolution

Besides those requirements enumerated in subsection (1) of section 11-2204, the city commission must take two additional steps under this section to have a valid resolution of intention for an "extended" district. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

References

Lumbermen's Trust Co. v. Town of Ryegate, 50 F 2d 219, 61 F 2d 14.

Collateral References

Municipal Corporations 465.
63 C.J.S. Municipal Corporations § 1417 et seq.

11-2206. (5229) • Protests against proposed work. (1) At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed

work, or against the extent or creation of the district to be assessed, or both. Such protest must be in writing, and be delivered to the clerk of the city or town council or commission, not later than 5 o'clock p. m. of the last day within said fifteen days period, and said clerk shall endorse thereon the date and hour of its receipt by him.

(2) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be so made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that, except as hereinafter provided, when the protest is against the proposed work, and the cost thereof is to be assessed against property fronting thereon, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission; provided, however, that when the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block, to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running (at) a right angle, or substantially so, with the single cross block so proposed to be paved, in such case the city or town council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface; and provided, too, that in case the improvement is the construction of a sanitary sewer such protest may be overruled by an affirmative vote of a majority of the members of the city or town council or commission; unless such protest is made by the owners of more than seventy-five per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

(3) In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered to the same effect as other property in the proposed district. The city or town council or commission may adjourn said hearing from time to time and protestants shall have the right to withdraw protest or protests at any time before final action thereon by the city or town council or commission.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R. C. M. 1921; amd. Sec. 2, Ch. 135, L. 1923; amd. Sec. 1, Ch. 36, L. 1939.

Compiler's Note

The compiler has inserted the bracketed word "at" in subsection (2).

Construction of Section

The provision of this section that ob-

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R. C. M. 1921; amd. Sec. 2, Ch. 135,

jections to a proposed special improvement shall be heard at the next regular meeting of the city council after the expiration of the fifteen days in which protest can be made, etc., is directory only. *Harvey v. Town of Townsend*, 57 M 407, 188 P 897.

Contracts May Not Exceed Approximate Estimate

Under section 11-2204 the amount of the contract for improvements cannot legally

L. 1923; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969.

Amendments

The 1969 amendment substituted "fifty per cent" for "forty per cent" twice in the first proviso in subsection (2).

Effective Date

Section 2 of Ch. 149, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

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exceed by seven and one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811.

Determination of Area of Protest

The phrase, "the area of the property to be assessed," as used in subsection (2) of this section to describe those persons entitled to protest creation of an improvement district, depends upon the method of assessment used by the city under section 11-2214. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Determination of Protests

Under the theory that a municipality may levy assessments for special improvements because the property will be benefited by the improvements to the extent of the burden imposed, protests must be weighed in the same manner as the assessments to give a greater voice to those who pay a greater amount of the tax. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Estoppel to Protest

The question of estoppel under section 11-2223 does not preclude a property owner from protesting a figure used as the "assessable area" in a resolution of intention for purposes of determining the sufficiency of the protest under this section, since it applies only to the actual assessment as stated in the resolution of assessment. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Invalid Assessment

Where the city commission proceeded to create a special improvement district notwithstanding the fact that owners of more than forty per cent of the area of the property to be assessed had protested against the proposed work, the improvements should not have been made and the assessment was void. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Jurisdiction

The phrase, "area of the property to be assessed," should be equated with the "assessable area," rather than the "actual area" of the district, so that where protestants owned 131,312.8 square feet of an assessable area figured by the city in its resolution of intention as 299,163.20 square feet, 43.89 per cent of the area actually assessed protested and the city was without jurisdiction to create the district. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Property Owned by City Also Must Be Computed

In determining whether forty per cent

of the owners of property affected by a proposed special improvement have filed protests against it, the city or town council is authorized by this section to take into consideration property owned by it and included in the district, such property being subject to assessment therefor the same as privately owned property. *Bicker v. City of Helena*, 68 M 350, 358, 218 P 1049.

Sufficiency of Protest

An alleged protest to street paving, filed by abutting owners, stating the reasons why they did not desire the paving done during a certain year, and stating that they were willing to have the street paved two years later, and that payment therefor should be required in three annual installments, was not an unqualified protest to the paving. *McMillan v. City of Butte*, 30 M 220, 228, 229, 76 P 203.

Where the language used by the city in its resolution of intention described an extended improvement district within the provisions of section 11-2205, the city was precluded by section 11-2214, subsection (2), from considering protests or assessments on the lineal frontage basis. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

If the owners of more than forty per cent of the area of the property to be assessed protest against either the extent or creation of an improvement district, the city is without jurisdiction to proceed with the improvement. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Withdrawal from Protest

A property owner in a city, who has signed a protest against the creation of a special improvement district, may, within the time allowed for presenting such protest, withdraw therefrom, and thus defeat the protest. *Hawley v. City of Butte*, 53 M 411, 413, 164 P 305.

References

Shapard v. City of Missoula, 49 M 269, 277, 141 P 544; *Cooper v. City of Bozeman*, 54 M 277, 281, 169 P 801; *School District No. 1 v. City of Helena*, 87 M 300, 309, 287 P 164; *Adkins v. Livingston*, 121 M 528, 194 P 2d 238, 210; *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061; *Cyr v. City of Missoula*, 135 M 94, 337 P 2d 365, 366; *Shaw v. City of Kalispell*, 135 M 284, 310 P 2d 523, 528; *Lumbermen's Trust Co. v. Town of Ryegate*, 50 P 2d 219, 61 P 2d 14.

Collateral References

Municipal Corporations §297 (1), 299, 491.

63 C.J.S. *Municipal Corporations* §§ 1097, 1103, 1478.

48 Am. Jur. 693, *Special or Local Assessments*, § 151 et seq.

Loss of right to contest an assessment in a street or sewer improvement or drainage proceeding. 9 ALR 631 and 812.

Failure of property owner to avail himself of remedy provided by statute or or-

dinance as precluding attack based on improper inclusion of property in, or exclusion of property from, assessment. 100 ALR 1292.

DECISIONS UNDER FORMER LAW

Effect of Action against Protest

Taxes levied by a city for special improvement purposes are absolutely void, where the city council proceeds to create an improvement district, notwithstanding owners representing more than one-half of the area of the property to be assessed to defray the cost of such improvement, appear before it and object to the adoption of the resolution creating the district

for the purpose indicated. *Hensley v. City of Butte*, 33 M 206, 210, 83 P 481.

Protest against Improvements

For a decision under a former statute in regard to the right of property owners to appear before the council and protest against the making of the proposed improvement, see *Hensley v. City of Butte*, 36 M 32, 92 P 34.

11-2207. (5230) Jurisdiction to order proposed improvements. When no protests have been delivered to the clerk of the city council within fifteen days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said city council to be insufficient, or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. But before ordering any of said proposed improvements, the city council shall pass a resolution creating the said special improvement district in accordance with the resolution of intention theretofore introduced and passed by the city council.

History: En. Sec. 6, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; re-en. Sec. 5230, R. C. M. 1921.

Acquisition of Jurisdiction

It is only after the lapse of fifteen days from the first publication of notice of intention to create an improvement district, and after all protests have been disposed of adversely to objecting property owners, that the city council shall be deemed to have acquired jurisdiction to order the improvement. *Shapard v. City of Missoula*, 49 M 269, 278, 141 P 544.

Ordering Improvement

The passage of the resolution creating a special improvement district constitutes a sufficient order for the making of the contemplated improvements. *Harvey v. Town of Townsend*, 57 M 407, 188 P 897.

Waiver of Claim for Damages

By failure of an objecting property owner to give notice of defects or irregularities in the proceedings to the council within sixty days after the contract for the work is let, he waives all claim for damages, under this section. *Harvey v. Town of Townsend*, 57 M 407, 188 P 897.

References

Hawley v. City of Butte, 53 M 411, 412, 161 P 395; *Cooper v. City of Bozeman*, 54 M 277, 282, 169 P 804; *Almas v. City of Havre*, 70 M 33, 36, 223 P 896; *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

Collateral References

Municipal Corporations—301.
63 C.J.S. Municipal Corporations § 1104 et seq.

11-2208. (5231) Sufficiency of description after resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, in any and all improvement districts, it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for the description and further particulars.

History: En. Sec. 7, Ch. 89, L. 1913; re-en. Sec. 5231, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1955.

11-2209. (5232) Bid for work and award of contract. (1) Notice inviting proposals, and referring to the specifications on file, shall be published at least twice in a daily, semiweekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall be posted in at least three (3) public places.

The city council may call for bids or proposals for several kinds and types of materials for any improvements proposed to be made under sections 11-2201 to 11-2243 of this code, reserving the right to select the kind or type of material to be used in making any such improvements, after the bids or proposals therefor shall have been opened, examined, and declared.

(2) The time fixed for the opening of bids shall be not less than ten (10) days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per centum (10%) of the aggregate of the proposal. Said proposals or bids shall be delivered to the clerk of the said city council, provided, however, that no proposal or bids shall be considered unless accompanied by said check. The bids shall be opened in public at a time and place to be designated by the city council at the previous council meeting. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid.

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often as the city council deems it advantageous, readvertise for proposals or bids for the performance of the work as herein provided, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the checks corresponding to the bids so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder, or by the owners of over fifty per centum (50%) of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements, as herein-after provided, then the certified check accompanying his bid, and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into the general fund. The provisions hereof shall be applicable to all special improvement districts created within one (1) year preceding the passage and approval of this act.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1931.

Notice for Bids

Contracts for the construction of special street improvements, let without first giving ten days' notice for bids, and more than nine months after the award, were

invalid as in contravention of the provisions of this section. *Cooper v. City of Bozeman*, 54 M 277, 284, 169 P 801.

References

Koich v. City of Helena, 132 M 194, 315 P 2d 811, 812.

Collateral References

Municipal Corporations \S 331 et seq.
63 C.J.S. Municipal Corporations \S 1147 et seq.
43 Am. Jur. 764, Public Works and Contracts, \S 23 et seq.

Bidder's variation from specifications on bid for public work. 65 ALR 835.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law. 69 ALR 697.

What is an "emergency" within statutory provision excepting emergency contract or work for requirement of bidding on public contracts. 71 ALR 173.

Right in submitting proposal for bids on public works to require bid on unit basis, with reservation to public authorities of right to determine amount or extent of work. 79 ALR 225.

Mandamus to compel consideration, ac-

ceptance, or rejection of bids for public contract. 80 ALR 1382.

Right to award public contract to one other than lowest financial bidder as affected by fact that bidder furnishes bond. 86 ALR 131.

Change in proposals for public contract after submission of bid as justification for withdrawal of bid or refusal to enter into contract. 104 ALR 1149.

Labor conditions or relations as factor in determining lowest responsible bidder for public contract or as factor in determining whether public contract should be let to lowest bidder. 110 ALR 1406.

Statute requiring competitive bidding for public contract as affecting validity of agreement, subsequent to the award of the contract, to allow the contractor additional compensation for extras or additional labor and material not included in the written contract. 135 ALR 1265.

Liability of municipality or other governmental body on implied or quasi contract for value of property or work. 154 ALR 256.

Rights and remedies of bidder for public contract who has not entered into a contract, where bid was based on his own mistake of fact or that of his employees. 52 ALR 2d 792.

11-2210. (5233) Contract by owner to do work. The owners of three-fourths of the frontage of lots and lands liable to be assessed, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within three days after the said award, elect to take such work and enter into a written contract to do the whole work at a price at least five per cent less than the price at which the same has been awarded, and all work done under such contract shall be subject to the same plans and specifications governing the lowest responsible bidder. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within three days, or to commence the work within fifteen days after the date of such written contract, and to prosecute the same with diligence to completion, it shall be the duty of the city council to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid.

History: En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R. C. M. 1921.

Collateral References

Municipal Corporations \S 231 (1).
63 C.J.S. Municipal Corporations \S 1070 et seq.

11-2211. (5234) Reletting contract after default of contractor. But if such original bidder neglects, fails, or refuses for fifteen (15) days after the notice of award to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to the then lowest regular bidder. Should no bids be received in response to the call for

proposals, the council may again advertise for bids under the same proceedings at any time within six (6) months from the time set for the last reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract, as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work.

History: En. Sec. 10, Ch. 89, L. 1913;
re-en. Sec. 5234, R. C. M. 1921; amd. Sec.
2, Ch. 173, L. 1931.

Collateral References
Municipal Corporations \S 337.
63 C.J.S. Municipal Corporations \S 1153.

11-2212. (5235) Default of contractor—reletting of work. If the contractor or owner who may have taken any contract does not complete the same within the time limited in the contract or within such further time as the city council may give him, the city engineer shall report such delinquency to the city council, which may relet the unfinished portion of said work after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance; or the city shall have the right at its option to complete the contract, and deduct any cost in excess of the contract price thereof from any money, bonds, or warrants due such contractor, or owners, and in the event there is no money, bonds, or warrants due such contractor or owners, from which to deduct such cost, then and in such event the city shall have the right to sue such contractor or owners, and recover from him such cost.

History: En. Sec. 11, Ch. 89, L. 1913;
amd. Sec. 6, Ch. 142, L. 1915; re-en. Sec.
5235, R. C. M. 1921.

Collateral References
Municipal Corporations \S 366, 367.
63 C.J.S. Municipal Corporations \S 1201.

11-2213. (5236) Bond of contractor. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council, with two or more sureties, and payable to such city, in a sum not less than twenty-five per cent of the amount of the contract, conditioned for the faithful performance of the contract, and indemnifying the city from any detriment, damage, or loss growing out of said work; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions; provided, however, that nothing herein contained shall be construed as to prevent or prohibit the city council from requiring or accepting in any case a bond furnished by a surety company authorized to transact business in the state of Montana.

History: En. Sec. 12, Ch. 89, L. 1913;
re-en. Sec. 5236, R. C. M. 1921.

43 Am. Jur. 879, Public Works and Contracts, \S 137 et seq.

Collateral References
Municipal Corporations \S 345, 346.
63 C.J.S. Municipal Corporations \S 1171
et seq.

Right of person furnishing material or labor to maintain action on contractor's bond. 77 ALR 24 and 118 ALR 57.

11-2214. (5238) Methods of payments of improvements. (1) To defray the cost of the making of any of the improvements provided for in this act, the city council or commission shall adopt one of the following methods of assessment; unless otherwise provided in subsection 1 (c):

(a) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within twenty-five (25) feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of land within the district lying within twenty-five (25) feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other land within the district shall bear.

(b) The city council or commission shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district, bordering or abutting upon street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that this method of assessment shall not apply to assessments in improvement districts created under the provisions of section 11-2205 of this code; and provided, further, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(c) Where curbs, gutters, alley approaches, streets, crossings and utility service connections are an integral part of the creation of storm sewer districts, sanitary sewer districts or street pavement districts, the city council or commission may assess a portion of the improvements upon the area basis, as set forth under subsection 1 (a); other portions of the improvements upon a lineal feet basis, as set forth under subsection 1 (b); and utility service connections upon a lump sum based on the bid price in the improvement district contract and assessed only against the lots, tracts or parcel of land served by the utility connection or connections; all within the same special improvement district, so long as such assessment is equitable.

(d) When the purpose of the assessment is for the establishment and improvement of offstreet parking as provided in this act, the city council or commission shall assess against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved, in proportion to the benefits received by each tract of land within said district. In determining the benefit to be received by each parcel of land, the city council or commission shall consider:

(i) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(ii) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(iii) the assessed value of each parcel within said district;

(iv) the square footage of each parcel within said district as it relates to the whole;

(v) the square footage of floor space in any improvements on the parcel and the various uses of such floor space;

(vi) the availability of existing on-site parking space on any parcel of land within the district. Provided, however, that before any improvement district can be created or financed under the provisions of this section, the city council or commission must, prior to the creation of said district, pass a city ordinance setting forth therein the formula to be used in determining the assessment of each lot or parcel within said district, which said formula must include but shall not be limited to the items to be considered as set forth hereinabove. And provided further than prior to the adoption of any such ordinance by the city council or commission, the city council or commission shall make a determination of the formula for the method of assessment as set forth above, considering all of the factors above set forth, and shall hold a public hearing after due notice and at such hearing all persons concerned may present their objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time. After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance.

(2) Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be and continue to be the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway either in the operation of its cars or in the laying or repair of its tracks, and in case of a failure or refusal of such owner or operator so to repair such pavement within a reasonable time after notice by the city council or commission, the city council or commission is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

(3) Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by

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the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the city from its general fund.

(4) It shall be lawful for the owner or owners of the lots or land fronting upon any street, the width and grade of which shall have been established by the city council or commission, to perform, at his or their own expense (after obtaining permission from the council or commission so to do, but before said council or commission has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width, or to the center line thereof and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in such grading, and proportions performed by each owner, and that the same is done to establish width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the city engineer, which certificate the engineer shall record in a book kept for that purpose in his office, properly indexed.

(5) Whenever thereafter the city council or commission orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said street for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the city clerk shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street, and belonging to any such certified owners or their successors in interest.

(6) Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work

(excepting grading) on such street, in front of any block, at his or their own expense, and the city council or commission shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the city engineer at the time said order is passed.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1925; amd. Sec. 1, Ch. 39, L. 1955.

Damages

Evidence to show the cost of filling plaintiff's lots and raising his buildings to grade, and the market value of the property before and after making the improvement, was competent and material in an action to recover damages occasioned by the change. *Eby v. City of Lewistown*, 55 M 113, 128, 173 P 1163.

Under allegations of the complaint that plaintiff's property had been permanently injured by change in street grade, rendered inaccessible and undesirable for the purposes for which used, necessitating large expenditures in filling and adjusting the lots to grade, etc., and defendant's denial of any damage whatever, the latter was entitled to introduce evidence tending to show that the property had not been injured or that the damage was less than claimed by plaintiff. *Eby v. City of Lewistown*, 55 M 113, 128, 173 P 1163.

Determination of Protests

Where the language used by the city in its resolution of intention described an extended improvement district within the provisions of section 11-2205, the city was precluded by section 11-2214, subsection (2), from considering protests or assessments on the lineal frontage basis. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Under the theory that a municipality may levy assessments for special improvements because the property will be benefited by the improvements to the extent of the burden imposed, protests must be weighed in the same manner as the assessments to give a greater voice to those who pay a greater amount of the tax. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Double Taxation

Where a district was created for the purpose of paying for improvements at intersections as authorized by section 11-2205 and another district was created to defray the cost of the street under this section there was in no sense double tax-

ation. The assessments were for different purposes. One assessment was to raise money to defray the cost of the intersections and the other to defray the cost of the street where it abuts on privately owned property. *Bidlingmeyer v. City of Deer Lodge*, 128 M 292, 274 P 2d 821, 823.

Estoppel to Protest

The question of estoppel under section 11-2223 does not preclude a property owner from protesting a figure used as the "assessable area" in a resolution of intention for purposes of determining the sufficiency of the protest under section 11-2206, since it applies only to the actual assessment as stated in the resolution of assessment. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Invalid Assessment

Where the city commission proceeded to create a special improvement district notwithstanding the fact that owners of more than forty per cent of the area of the property to be assessed had protested against the proposed work, the improvements should not have been made and the assessment was void. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Jurisdiction

The phrase, "area of the property to be assessed," as used in section 11-2206, subsection (2), should be equated with the "assessable area," rather than the "actual area" of the district, so that where protestants owned 131,312.8 square feet of an assessable area figured by the city in its resolution of intention as 299,163.20 square feet, 43.89 per cent of the area actually assessed protested and the city was without jurisdiction to create the district. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Method of Assessment

Since there is a direct correlation between this section and subsection (2) of section 11-2206, as expressed in the phrase, "the area of the property to be assessed," the method of assessment used by the city governs the basis for determining those persons entitled to protest creation of an improvement district. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Necessity of Notice

All statutory requirements as to the form and contents of a special improvement assessment must be substantially complied with, they being regarded as mandatory and jurisdictional, and the apportionment of the cost is essential to the validity of the assessment, as is notice to the owners to enable them to be heard and contest if desired; failure to give notice will render the assessment void, whether or not notice is expressly required by law. *Morse v. Kroger*, 87 M 54, 60, 285 P 185.

Objections to District

To estop a taxpayer from attacking the validity of the creation of a special improvement district by payment of an installment of the tax, the payment must have been voluntarily made. A city could not be prejudiced by the payment of such installment tax, which, being invalid, it was not entitled to collect, and was therefore not in a position to claim an estoppel. *City of Lewistown v. Warren*, 52 M 356, 357, 157 P 954.

Public and District Sewer Distinguished

The cost of constructing a public sewer, as distinguished from a district sewer, must be provided for, under the next section, either from the general or sewer fund or by the sale of bonds, and may not be assessed on the basis of area under the special improvement district plan provided by this section. *Rush v. Grandy*, 66 M 222, 226, 213 P 242, distinguished in 130 M 158, 169, 297 P 2d 292.

Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the contracts for the work must be awarded by the state.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1925; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973.

Amendments

The 1971 amendment added "unless otherwise provided in subsection 1(c)" to the end of the preliminary paragraph of subsection (1); inserted subdivision

11-2214.1. Authorization to issue bonds by improvement district formed for pedestrian malls or off-street parking. An improvement district formed for pedestrian malls or off-street parking shall be authorized to issue improvement bonds.

(a) When the governing body determines that improvement bonds be issued, it shall so declare in the resolution of intention for the work and shall specify the rate of interest which they shall bear. A like description of the bonds shall be inserted in all notices of the proceedings required to be published or posted, and a notice that the bonds will be paid from a special fund collected, in not to exceed twenty-five (25) annual installments, from the assessments of twenty-five dollars (\$25) or over remaining unpaid thirty (30) days after the date of the warrant, or five (5) days after the decision of the governing body upon an objection. A like description of the bonds shall be included in the warrant.

(b) All other proceedings for the work up to and including the

highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

What May Be Assessed

An easement in a city street in favor of a railway company for right of way purposes in crossing it is not susceptible of assessment for a special improvement, where the basis adopted for apportioning the cost thereof is front footage; nor is the tract itself assessable under such plan, since under it the lot or parcel of land bordering or abutting on the street on which the improvement was made must bear the cost proportionately, and a street cannot border or abut upon itself. *Chicago, Milwaukee & St. Paul Ry. Co. v. Poland*, 54 M 497, 503, 172 P 541.

References

Stanley v. Jeffries, 86 M 114, 124, 284 P 134; *School District No. 1 v. City of Helena*, 87 M 300, 287 P 164.

Collateral References

Municipal Corporations 406 (1).
63 C.J.S. *Municipal Corporations* § 1294.
48 Am. Jur. 761, *Special or Local Assessments*, § 256 et seq.

Right of taxpayer to anticipate payment of tax or special improvement assessment for deferred installments thereof. 96 ALR 1475.

Effect of certificate or statement of treasurer or other public official regarding unpaid taxes or assessments against specific property. 107 ALR 568 and 21 ALR 2d 1273.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment. 114 ALR 399.

Personal liability of property owner to pay assessments for local improvements. 127 ALR 551 and 167 ALR 1030.

(1)(c); and made a minor change in punctuation.

The 1973 amendment added subdivision (d), including paragraphs (i) to (vi), to subsection (1); and made a minor change in style.

Effective Date

Section 2 of Ch. 85, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved 11-2-1973.

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approval of the assessment by the governing body, and including delivery of the assessment to the contractor, demand of payment of the several assessments and the return and record thereof, shall be in all respects as provided in this article.

History: En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967.

11-2214.2. Assessments and bonds for pedestrian malls or off-street parking. (a) After expiration of the prescribed time from the date of the warrant, and after the treasurer has recorded the return, he shall make and certify to the clerk a complete list of all assessments unpaid, which amount to twenty-five dollars (\$25) or over, upon any assessment.

(b) If any person before certification of the list to the clerk presents to the treasurer his affidavit that he is the owner of a lot in the list, accompanied by the certificate of a searcher of records that the person is the owner of record, and notifies the treasurer in writing that he desires no bond to be issued for the assessment upon the lot, then the assessment shall not be included in the list, and shall remain collectible as provided by this article. Omission to file the notice shall bar any defense against the bonds except the defense that the governing body did not have authority to issue the bonds.

(c) The clerk shall present the list to the governing body at its next meeting, and the body shall thereupon, by resolution, direct improvement bonds to be issued to the contractor for the amount of the assessments remaining unpaid, prescribing the number and denomination of the bonds, and the times when payable, which shall be so fixed that an approximately equal amount of the total sum shall be paid each year until the whole amount is paid, not exceeding twenty-five (25) years and three (3) months from the date of the bonds, but any fractional amounts may be added to the amount due in any year, so that the amounts due in all other years shall be in equal multiples of one hundred dollars (\$100) each. Except for a bond to represent any odd amount due in any year, the denominations of the bonds shall be fixed at one hundred dollars (\$100) or some multiple thereof, not exceeding one thousand dollars (\$1,000). The resolution shall also fix the place, if any, other than the office of the treasurer, at which the bonds and the interest thereon shall be payable.

(d) The bonds shall be issued as of the date of the warrant, and shall bear interest from such date at the rate specified in the resolution of intention. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring ninety (90) days after the date of the bond, and shall be for the interest accrued at that time.

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(e) The due date of all bonds shall be January 1 in the years in which they respectively become due.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971. ceeding eight per cent (8%) per annum" from the end of the first sentence of subsection (d).

Amendments

The 1971 amendment deleted "not ex-

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11-2214.3. Certification of unpaid assessments—payments by installments—interest—and payments in advance for pedestrian malls and off-

street parking. (a) The treasurer at the time he certifies the list of assessments unpaid to the clerk, shall write the word "certified" on the record of the assessment opposite each assessment included in the list, and thereupon all assessments of twenty-five dollars (\$25) or over shall cease to be payable in cash and shall thereafter be payable only in equal annual installments on December 1, in each year preceeding January 1, on which the bonds become due. The governing body may provide a plan whereby the annual installment may be collected in partial payments prior to the time the installment is due, and the lien of each assessment on the property assessed shall continue and remain in full force and effect for two (2) years after the last installment on the assessment becomes due, or until the assessment is fully paid.

(b) An uncollected installment shall be added to the succeeding installment and, together with interest and penalties, shall be payable therewith.

(c) The number of installments in which the assessment is payable shall correspond to the number of years in which there are bonds to be paid, but the total number of installments shall not exceed twenty-five (25).

(d) All assessments of twenty-five dollars (\$25) or more not paid before the certification of assessments unpaid to the clerk shall bear interest from the date of the warrant at the same rate as that specified for the bonds in the resolution of intention. The interest shall be payable on June 1, and December 1, of each year, immediately before the interest becomes due on the bonds, but the governing body may provide a plan whereby the interest may be collected in partial payments prior to the date it becomes due.

(e) The governing body may provide for receiving payment of the installments of the assessment before they become due, and using the proceeds thereof in redeeming such bonds as may be presented for redemption by the owners thereof, or for investing the proceeds in improvement bonds for other work or other satisfactory investment, but no investment of such funds shall be made so as to prejudice the prompt payment of the bonds on the date they become due.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967.

11-2214.4. Improvement districts for providing off-street parking facilities—providing for the leasing of real property therefor, and for the improvement thereof. (a) In addition to the purposes [for] which an improvement district may be formed under the provisions of 11-2201, an improvement district may be formed for the sole purpose of leasing real property to be used as off-street parking sites, for the improvement of such off-street parking sites by grading, paving, ordering the installation of lighting poles, wires, conduits, lamps, standards and other appliances for the purpose of lighting and beautifying the off-street parking areas and entrances thereto, and for the operation and maintenance thereof.

(b) Subject to the powers granted and the limitations contained in this section, and in 11-2201, the powers and duties of the governing body

of the municipality and the procedure to be followed shall be as provided in this article for other types of special improvement districts.

(c) After the formation of a special improvement district, pursuant to the provisions of 11-2204, and as modified in 11-2214.5, and after having acquired jurisdiction to order the improvement pursuant to 11-2207, the governing body may, in addition to ordering the improvements set forth in subsection (a) of this section, enter into lease agreements for property within the limits of the assessment district for use as off-street parking sites, which lease agreements shall be upon such terms and conditions as the governing body may determine, and which lease agreements may provide that same may be terminated by either party upon six (6) months' prior written notice, and may contract for the operation and maintenance thereof. The governing body may enter into such lease agreements and contract for the operation and maintenance of such off-street parking sites without the publication of notice and invitation for bids.

(d) The governing body shall make annual statements and estimates of the expenses of the district, which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district, shall publish notice thereof, shall have hearings thereon and adopt at the times and in the manners provided for incorporated cities and towns by the applicable portions of section 11-2214. The governing body, on or before the second Monday in August of each year, shall fix, levy and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

(e) An improvement district formed under provisions of this section shall not be authorized to issue improvement bonds, and no assessment for district purposes against the property within such district shall exceed twelve (12) mills upon each dollar of taxable valuation thereof in any tax year.

(f) No improvement district formed under provisions of this section shall be authorized to engage in any activity other than the leasing of off-street parking sites and the improvement, operation and maintenance of same. If the municipality is willing to participate in the cost of leasing, improving, operating or maintaining the off-street parking sites in such improvement districts, the governing body may, by resolution, summarily order such participation and the amount of any such participation shall not be subject to the limitations of section 11-2202.

(g) The formation of an improvement district for off-street parking purposes under the provisions of this section shall not prevent the subsequent establishment of improvement districts for any other purpose authorized by law.

(h) If in the opinion of the governing body, any portion of the territory of a district formed under this section is no longer benefited by the off-street parking sites provided, the governing body may, by resolution, summarily delete from the district formed under this section any

such area, and may form a new district from the balance of the original district formed under this section.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967.

Compiler's Note

The compiler has inserted the bracketed word "for" in subsection (a).

11-2214.5. Special provisions relating to improvement districts for off-street parking purposes. (a) If a petition for the formation of an improvement district for the leasing, improvement or operation and maintenance of an off-street parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of 11-2204, and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to provisions of 11-2207, without the necessity of the publication and posting of the resolution of intention provided for in 11-2204.

(b) If a petition for the formation of an improvement district for off-street parking purposes, and for the leasing of sites and improvement, operation and maintenance thereof is presented to the governing body, signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district, the governing body shall adopt a resolution of intention ordering the proposed improvement and cause same to be published and posted pursuant to the provisions of 11-2204.

History: En. 11-2214.5 by Sec. 6, Ch. 136, L. 1967.

11-2215. (5238.1) Including and assessing unplatted lands in improvement district. That whenever any unplatted, undedicated or unsurveyed lot, piece or parcel of land that separates one platted part of the city from another platted part of said city, lying wholly within the boundaries of any city or town, except land owned by the United States, shall abut or border upon any special improvement district, or be included within the boundaries of any special improvement district of such city or town, the council of such city or town may cause the same to be included within and made a part of such special improvement district, in the same manner as other property within such special improvement district and may assess the same for its proportionate share of the cost of making or maintaining such improvements in the same manner as other property within such special improvement district.

History: En. Sec. 1, Ch. 16, L. 1923.

Collateral References

Municipal Corporations 459 (2).

63 C.J.S. Municipal Corporations § 1362 et seq.

Enforceability, against undivided tract, of tax or special assessment levied against part of it at one rate and part at another. 112 ALR 73.

11-2216. (5239) Sewer systems. (1) A sewer system may be established in a city or town, which system may be divided into public, district and private sewers.

Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and material, and under such regulations as may be prescribed by the council; and there may be constructed such branches and extensions of sewers already constructed, or to be constructed, as may be considered expedient.

(2) To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund, or by availing itself of moneys derived from a bond issue authorized by the constitution and laws of the state. It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

(3) And/or to provide such sewer fund, and/or to provide for the retirement of such bonds, and/or the payment of the interest on such bonds, and/or for any purpose herein mentioned, the city council shall, upon being petitioned by five (5) per cent of the qualified electors, at the annual municipal election or at any special election called for that purpose, submit to a vote to the qualified electors, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix scale of such rentals and prescribe the manner and time at which such rentals shall be paid, and if a majority of votes is cast in favor of such proposition then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals should be paid and to change such scale of rentals from time to time as may be deemed advisable; providing, that the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance and repair of any such sewer system. For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed, or by such procedure as may be prescribed by the city or town council, the revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment

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(4) The funds received from the collection of sewer rentals shall be kept as a separate and distinct fund by the city treasurer, subject only to disbursement by order of the council. This fund shall be used for (1) the payment of the cost of management, (2) maintenance, (3) operation and (4) repair of the sewage system, including treatment and disposal works, (5) for the creation of a sinking fund for the retirement of any indebted-

ness, (6) for the payment of interest on any such indebtedness, and any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment and disposal works, and for retiring such debt, but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those above specified.

(5) Any twenty-five (25) or more electors of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory, and the public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory, and the municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

(6) It is further provided that all the provisions of this act referring to sewer rentals, shall apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, as provided for in chapter 133, Laws of 1929 and the powers herein conferred on councils shall be and are hereby conferred on the several boards of county commissioners for the purposes of said chapter 133, Laws of 1929—in so far as the same relates to sewers.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1933.

NOTE.—The reference in subsection (6) to chapter 133, Laws of 1929, refers to sections 16-1601, 16-1611 and 16-1619 of these codes.

Benefit from Improvement

The theory upon which a municipality may levy an assessment for a special improvement, such as the construction of a sewer, is that the property charged receives a corresponding physical, material and substantial benefit from the improvement. *Power v. City of Helena*, 43 M 336, 341, 116 P 415, distinguished in 81 M 556, 561, 276 P 938.

Construction Costs

The cost of constructing a public sewer, as distinguished from a district sewer, must be provided for, under this section, either from the general or sewer fund or by the sale of bonds, and may not be assessed on the basis of area under the special improvement district plan provided by section 11-2215. *Rush v. Grandy*, 66 M 222, 226, 213 P 242, distinguished in 130 M 158, 169, 297 P 2d 292.

Payment of Expenses

Whether the expense of making a municipal improvement shall be paid out of the general treasury or be assessed upon abut-

ting property or other property specially benefited, and, if in the latter mode, whether the assessment shall be upon all property found to be benefited or alone upon that abutting, is a question of legislative expediency. *Crutchfield v. Nash*, 81 M 556, 562, 276 P 938.

Public Sewer

A "trunk" sewer, i. e., one which receives the discharges from district sewers, is a public sewer within the meaning of this section. *Rush v. Grandy*, 66 M 222, 226, 213 P 242.

References

Crawford v. City of Billings, 130 M 158, 297 P 2d 292, 298.

Collateral References

Municipal Corporations—270, 712.
63 C.J.S. *Municipal Corporations* § 1049;
61 C.J.S. *Municipal Corporations* § 1802 et seq.
38 Am. Jur. 252, *Municipal Corporations*, § 565.

Loss of right to contest an assessment in a street or sewer improvement or drainage proceeding. 9 ALR 634 and 842.

Construction or improvement of sewers as a local or district improvement within provisions authorizing or requiring special assessments or other specified means of defraying expense. 131 ALR 895.

Amendments

The 1973 amendment deleted "who must be taxpaying freeholders, as shown by the last assessment for taxable purposes"

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1933; amd. Sec. 3, Ch. 100, L. 1973.

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following "five (5) per cent of the qualified electors" in the first part of subsection (3); deleted "who must be tax-paying freeholders" following "qualified

electors" later in subsection (3); and substituted "electors" for "freeholders" near the beginning of subsection (5).

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11-2217. Cities and towns may establish sewage treatment and disposal plant systems and water supply and distribution systems. Any city or town may when authorized so to do by a majority vote of the qualified electors voting on the question establish, build, construct, reconstruct and/or extend a storm and/or sanitary sewerage system and/or a plant or plants for treatment or disposal of sewage therefrom, or a water supply and/or distribution system, or any combinations of such systems, and may establish such facilities for public use, and in addition to all authority, by

be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest, but nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any principal or interest due which can be paid from revenues then on hand.

(7) Any municipality having issued bonds payable from net revenues of its water and sewer system or combined water and sewer systems, whether under authority of this section or otherwise, may issue additional bonds after authorization by the qualified electors in the manner hereinabove provided, to finance the reconstruction and improvement of such system and the construction of additions thereto, and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with the issue authorized by the electors for reconstruction, improvements and additions, or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors.

(8) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvements and additions and the lien of such new bonds upon the revenues of the system or systems must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent ($\frac{3}{8}$ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such

11-2308 to 11-2310, inclusive; and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

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(2) Prior to the issuance of said bonds the city council or other governing body of such municipality shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds, and must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

(3) At or before the issuance and sale of any such bonds, the governing body shall, by resolution or ordinance, set aside to such sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable, and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

(4) The said net income and revenues above-mentioned shall be construed to mean all the gross income from said system less normal, reasonable and current expenses of operation and maintenance thereof.

(5) Said payments above-mentioned shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system, provided that the governing body shall have power from time to time to establish the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

(6) Any such municipality, by ordinance or resolution adopted by its governing body, and without an election, may issue and sell negotiable revenue bonds in the manner provided in this section, to refund bonds previously issued for any of the foregoing purposes, whether issued under authority of this section or any other applicable law. Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby,

dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds

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(10) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (9) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963.

Constitutionality

This section is constitutional. *City of Billings v. Nore*, 148 M 96, 417 P 2d 458, 444

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "which bonds shall bear interest at a rate . . . six per centum (6%) per annum" after "sections 11-2308 to 11-2310, inclusive" near the middle of subsection (1); and made a minor change in punctuation.

Collateral References

Municipal Corporations—911, 951; Waters and Water Courses—203 (1), (5).
64 C.J.S. Municipal Corporations §§ 1907, 1953; 91 C.J.S. Waters § 281.

Installment Contracts

Installment payment of construction costs of both separate and joint use facilities of city shop complex to be used in part by water and sewer department could be considered "normal, reasonable and current expenses of operation and maintenance" of the water and sewer systems and thus department funds could be used to pay proportionate share of construction costs although they were derived from water and sewer charges which otherwise would be applied toward retirement of outstanding bonds. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

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11-2219. Rates and charges for services. The governing body of such municipality shall have full power and authority, and it is hereby made its duty to fix and establish, on the basis of water consumed or any other equitable basis, by ordinance or resolution, and collect rates and charges for the services and facilities afforded by the system.

The rates and charges established for the services and facilities afforded by this system shall be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance and for the payment of the sums required to be paid into the sinking fund and for the accumulation of such reserves and the making of such expenditures for depreciation and replacement of said system as shall be determined necessary from time to time by the governing body, or as shall have been covenanted in the ordinances and resolutions authorizing the outstanding bonds.

The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in preceding paragraph.

History: En. Sec. 3, Ch. 149, L. 1943;
amd. Sec. 3, Ch. 98, L. 1955.

Constitutionality

This section is constitutional. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 468.

11-2220. Income to be kept separately. After any municipality has issued and sold revenue bonds under this act, it must keep all income and revenues derived from the operation of the system separate and distinct from all other revenues and shall keep books and accounts for such system separate and distinct from all other books and accounts.

The governing body shall maintain a sufficient balance of cash in the sinking fund for the payment of principal and interest currently due on outstanding revenue bonds, but may in its discretion, and subject to any restrictions contained in the ordinances or resolutions authorizing such bonds, invest moneys in said sinking fund, or other net revenues held in reserves for bond payments, replacements or depreciation, in general obligation bonds of the United States of America or of the municipality itself. The income from all such investments shall remain part of the sinking fund or reserve from which the investment was purchased, and all such investments shall be collected at maturity or shall be sold when necessary to provide cash for the purposes of said sinking fund and reserves. Subject to the provisions of any such ordinances or resolutions the governing body may also apply net revenues to the purchase of outstanding revenue bonds which are not yet prepayable according to their terms, at such price as will yield a net return to the municipality, computed to the earliest redemption date of such bonds, and for the redemption of any of said bonds as and when the same become prepayable according to their terms.

Any such bonds and interest thereon shall be a valid claim of the holders thereof only against the sinking fund and the net income and revenues of the system pledged thereto and shall not constitute an indebtedness of the municipality within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

History: En. Sec. 4, Ch. 149, L. 1943;
amd. Sec. 4, Ch. 98, L. 1955.

Constitutionality

This section is constitutional. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 468.

Power to Allocate Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate

proportionate share of costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 942.

11-2220.1. Powers and duties of public service commission unaffected. Nothing contained in this act shall be construed to change or affect the powers and the duties of the public service commission of Montana prescribed in chapter 1 of Title 70 of the Revised Codes of Montana of 1917.

History: En. Sec. 5, Ch. 98, L. 1955. 9S, Laws of 1955, the other provisions of which are compiled as sections 11-2217 to 11-2220.

Compiler's Note

The words "this act" refer to chapter

11-2221. Covenants with holders of bonds—users of system must pay for service—no tax liability incurred—registration of bonds. Any municipality issuing bonds under this act shall have the right to covenant with the holders of the bonds as to (a) the purpose to which the proceeds received from the sale of the bonds shall be applied and the use and disposition thereof; (b) the use and disposition of the income and revenues derived from the operation of the system; (c) the issuance and sale of additional bonds payable from the income and revenues of the system; (d) the operation and maintenance of the system; (e) the insurance to be carried hereon and the disposition of the insurance moneys; (f) its books of account and the inspection and audit thereof and its accounting methods; (g) rates and charges for the services and facilities afforded by the system, and any other matters pertaining to the manner of handling this system and care and manner of paying the revenues on the bonds and interest.

No person, firm or corporation shall be permitted to use said system, except they pay the full and established rate for said service.

Nothing contained in this act shall be construed to permit the municipality to incur, under the provisions thereof, any obligation for the payment of which taxes may be levied.

Any bonds issued under this act may be registered with the city treasurer of said municipality.

History: En. Sec. 5, Ch. 149, L. 1943.

Constitutionality

This section and section 11-2217 are not objectionable on the ground of unreasonable classification because there are taxpayers who could vote upon storm sewer project but would not be required to pay for it. *City of Billings v. Nore*, 148 M 96, 417 P 2d 458, 464, 468.

Legal electors and owners of property within city were not the proper parties to attack the constitutionality of this section and section 11-2217 on the basis that some persons will have to pay who cannot vote or on the grounds that certain persons outside the city might be charged. *City of Billings v. Nore*, 148 M 96, 417 P 2d 458, 464, 468.

11-2222. (5240) Assessment to pay cost of improvements. To defray the cost of making improvements in any special improvement district, or of acquiring property for the opening, widening, or extending any street or alley, or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council shall by resolution levy and assess a tax upon all property in any district created for such purpose, by using for a basis for assessment one of the methods set forth in section 11-2214 of this code. Such resolutions shall contain a description of each lot and parcel of land, with the name of the owner, if known, and the amount of each partial payment to be made, and the day when the same shall become delinquent.

The payment of assessments to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed twenty years, payments to be made in equal annual installments.

History: En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R. C. M. 1921.

Assessments To Include Interest to Maturity

Special improvement district bonds are not general obligations of the city, and

their payment is strictly limited to the fund provided by statute and ordinance; the lien of the assessments extends to each lot or parcel of land separately, and not jointly, and payment thereof on one lot or issue of tax deed thereon discharges the lien thereon; assessments upon property in the district, must, under this section, include the interest on the bonds to maturity, as part of the cost of such improvements. *State ex rel. Griffith v. City of Shelby*, 107 M 571, 576, 87 P 2d 183.

Collateral References

Municipal Corporations—406 (1), 449 (3).

63 C.J.S. Municipal Corporations §§ 1294, 1391.

38 Am. Jur. 78, Municipal Corporations, § 359 et seq.

Assessment of parkway occupied by street railway company for street improvement. 10 ALR 164.

Validity and effect of condition of dedication that remaining property shall not be subject to assessments for improvements. 16 ALR 499 and 37 ALR 1357.

Liability of railroad or street railway which paves or is liable for paving occupied portion of street to assessment for improvement of remainder. 29 ALR 679.

Assessment of railroad right of way for local improvements. 37 ALR 219 and 82 ALR 425.

Liability of municipality in consequence of its inability, refusal, or failure to collect the cost of local improvements from the

property benefited. 38 ALR 1271; 51 ALR 973 and 172 ALR 1030.

Excessiveness or unfairness of assessment for highway improvement on property of railroad company. 48 ALR 497.

Assessments for improvements by the front-foot rule. 56 ALR 911.

Assessment of right of way other than that of railroad or street railway for street or local improvement. 58 ALR 127.

Cemetery property and cemetery lots as subject to assessment for public improvement, in absence of express exemption. 71 ALR 322.

Liability of abutting property to assessment for street paving as affected by character or extent of traffic. 73 ALR 1295.

Homestead as subject to assessment for local improvements. 79 ALR 712.

Property unit for purposes of assessment for street or other local improvement as affected by owner's disregard of original lot lines or creation of new ones. 104 ALR 1049.

Constitutionality of statutes relieving property subject to assessment for improvement from all or part of such assessment. 105 ALR 1169.

Prohibition to prevent levy of assessments. 115 ALR 3, 20 and 159 ALR 627.

Personal liability of property owner to pay assessments for local improvements. 127 ALR 551 and 167 ALR 1030.

Right of landowner to recover back benefit assessments, upon ground of abandonment of improvement project. 145 ALR 1129.

11-2223. (5241) Hearing of objections—modification of assessment. Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk stating that the resolution levying the special assessment to defray the cost of such improvements is on file in his office, subject to inspection for a period of five days, shall be published at least once in a newspaper published in the city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council, and the time for such hearing shall not be less than five days after the publication of such notice. At the time so fixed the council shall meet and hear all such objections, and for that purpose may adjourn from day to day, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within two days after its passage.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R. C. M. 1921.

Estoppel to Protest

The question of estoppel under this section does not preclude a property owner from protesting a figure used as the "as-

sessable area" in the resolution of intention for purposes of determining the sufficiency of the protest under section 11-2206, since it applies only to the actual assessment as stated in the resolution of assessment. *Smith v. City of Bozeman*, 144 M 528, 398 P 2d 462.

Collateral References

Municipal Corporations \S 455.
63 C.J.S. Municipal Corporations \S 1399.
48 Am. Jur. 693, Special or Local Assessments, \S 151 et seq.

Loss of right to contest an assessment in a street or sewer improvement or drainage proceeding. 9 ALR 634 and 812.

Failure of property owner to avail himself of remedy provided by statute or ordinance as precluding attack based on improper inclusion of property in, or exclusion of property from, assessment. 100 ALR 1292.

11-2224. (5242) Care of street parking—resolution levying assessment. Where trees have been planted, grass plots constructed, and grass sown thereon, or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed, and to otherwise maintain and preserve said improvements, as the council shall deem suitable and proper, and the whole cost of maintaining said improvements, including the liquidation amount, if any, hereinafter provided for, shall be paid by assessing the entire district in either one of the two methods set forth in section 11-2214 of this code. It shall be the duty of said council to estimate, as near as practicable, the cost of maintaining the improvements in each district for the season; and before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining said improvements within the several districts, and in the manner hereinabove provided, and may further, until full liquidation is realized, include therein an amount not to exceed twenty per centum (20%) of any floating indebtedness, consisting of valid outstanding warrants drawn and issued against the maintenance funds of the respective districts, existing at the close of business on the 30th day of June, 1943, together with not to exceed such per centum of the current interest thereon from such last mentioned date, which moneys derived from such portion of such levy and assessment for such additional amount, if included in such levy and assessment, may only be expended toward liquidating such floating indebtedness, together with the interest thereon, and not otherwise. Said resolution levying assessments to defray the cost of maintenance of such improvement, including such additional amount, if any, towards liquidation of such floating indebtedness, shall be in every manner prepared and certified to the same as a resolution levying assessments for making improvements in said special improvement districts, and the money collected therefrom shall be paid into a fund known as "special improvement district No. maintenance fund," the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situate; provided, however, that the city or town council shall have the power not more than once in a year of changing by resolution the boundaries of any maintenance district, but such change of boundaries shall not affect indebtedness existing at the time of such change.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1913.

Collateral References

Municipal Corporations \S 449 (1-3), 678.
63 C.J.S. Municipal Corporations \S 1391;
64 C.J.S. Municipal Corporations \S 1693.

11-2225. (5243) Damages to property and payment thereof. Whenever the owner or any one interested in any property situated within any special improvement district, after having filed with the clerk the written notice required by section 5237 of this code, shall be awarded or recover any amount on a count of damages sustained to such property by reason of the construction of any improvement in said special improvement district, if the resolution levying assessment to defray the cost of making such improvements in said district has not been passed and adopted by the city council, the amount so awarded or recovered shall be added to and constitute a part of the cost of the making such improvements; but if the resolution levying assessments to defray the costs and expenses of making said improvements has been passed and adopted by the city council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in said district for the purpose of paying the amount so awarded or recovered. Said supplemental resolution shall be made and in every manner prepared and certified the same as the original resolution levying assessments to defray the cost of making such improvements.

History: En. Sec. 19, Ch. 89, L. 1913; re-en. Sec. 5243, R. C. M. 1921.

NOTE.—Section 5237, R. C. M. 1921, referred to in this section, which makes the giving of notice necessary in order to maintain an action for damages, was held unconstitutional in *Eby v. City of Lewistown*, 55 M 113, 120, 173 P 1163. Section 5237 was later repealed by Sec. 4, Ch. 50, Laws 1947.

References

Eby v. City of Lewistown, 55 M 113, 120, 173 P 1163.

Collateral References

Municipal Corporations 402 (1).
63 C.J.S. Municipal Corporations § 1264.

11-2226. (5244). Construction of sidewalks, curbs and gutters without formation of special improvement district. The city council may order sidewalks, curbs and gutters, or any combination thereof, constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk, curb and gutter, or any combination thereof, constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk, curb and gutter, or any combination thereof, is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, the city may construct or cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the property in front of which the same is constructed.

When any such sidewalk, curb and gutter, or any combination thereof, is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as

special sidewalk, curb and gutter fund, and the council may provide for the payment of said interest annually.

- The payment of assessments to defray the cost of construction of said sidewalks, curbs and gutters, or any combination thereof, may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs and gutters, or any combination thereof, have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5241, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1929; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "which

warrants shall bear interest at the rate of six per centum (6%) per annum" before "and the council may provide for the payment of said interest annually" near the end of the third paragraph; and made minor changes in style.

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11-2226.1. Construction or replacement of alley approaches without formation of special improvement district. The city council may order

alley approaches constructed or replaced adjacent to any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such alley approaches constructed or replaced, such order shall be entered upon the minutes of the council and shall name the street along which said alley approach is to be constructed or replaced. What constitutes an alley approach shall be defined by the city council of each municipality which orders in alley approaches as provided in this section. After the making of such order, written notice thereof shall be given the owners or agents of all adjacent owners having access to their properties by said alley approach, in such a manner as the council may direct. If the owners or agents of all adjacent owners of such lots or parcels of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such alley approaches to be constructed or replaced, the city may construct or cause such alley approach to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2223 of this code, against the lots or parcels of land having access to said property via the said constructed alley approaches.

When any such alley approach is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special alley approach fund, which warrants shall bear interest at the rate of up to six per cent (6%) a year, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said alley approach may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land having access to said property via the said alley approach which has been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. 11-2226.1 by Sec. 1, Ch. Title of Act
206, L. 1971.

An act providing for construction or replacement of alley approaches without formation of special improvement districts.

11-2227. (5245) Interest on assessments. Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged, and the treasurer, in collecting such special assessment taxes, if the same are payable in one (1) installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5215, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1937; amd. Sec. 10, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six per cent (6%) per annum" after "simple interest shall be charged" near the beginning of the section; and made a minor change in style.

11-2228. (5246) Costs and expenses considered as cost of improvements. The cost and expense connected with and incidental to the formation of any special improvement district, including costs of preparation of plans, specifications, maps, plats, engineering, superintendence, and inspection, and preparation of assessment rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the city clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 22, Ch. 89, L. 1913;
re-en. Sec. 5246, R. C. M. 1921.

Contracts May Not Exceed Approximate
Estimate

The amount of the contract for improvements cannot legally exceed by seven and

one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. *Koich v. City of Helena*, 132 M 194, 255 P 2d 811.

Collateral References

Municipal Corporations \S 460.
63 C.J.S. Municipal Corporations \S 1411, 1412.
48 Am. Jur. 605, Special or Local Assessment, \S 49 et seq.

Priority as between liens for public improvements. 5 ALR 1501 and 99 ALR 1478.

Assessment of right of way other than that of railroad or street railway for street or local improvement. 58 ALR 127.

Power to impose cost of maintenance or operation of street lighting system on local improvement district. 60 ALR 272.

Necessity that additional assessment in

proceeding for local improvement precede incurring liability in excess of the original assessment. 63 ALR 1179.

Priorities between lien of general taxes and the lien of special assessments. 65 ALR 1379.

Constitutionality of statute giving priority to lien for public improvements over pre-existing contractual liens. 78 ALR 313.

Assessment of railroad right of way for local improvements. 82 ALR 425.

Manner of enforcing special assessments against public property. 95 ALR 689 and 150 ALR 1394.

Scope and import of term "owner" with respect to giving notice of making of public improvement. 95 ALR 1085, 1091.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment. 114 ALR 399.

11-2229. (5247) Assessments as lien upon property. Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 89, L. 1913; re-en. Sec. 5247, R. C. M. 1921.

Commencement of Lien

Where the city council had acquired jurisdiction to order a special improvement and levy the assessment to pay for it, the assessment became a lien against the property benefited by it from the date the assessment became due, not affected by the circumstance that plaintiffs had recovered judgments against the city for damages caused by the improvement. *Allen v. City of Butte*, 55 M 205, 209, 175 P 595.

Construction of Section

Advertising costs are also collectible by reason of this section and section 84-4726, to which section 11-2233 makes reference. (State ex rel. City of Wolf Point v. McFarlan, 78 M 156, 252 P 895). School District No. 1 v. City of Helena, 87 M 300, 287 P 164.

Extinguishment of Lien

Under our statutory provisions with relation to special improvements in cities and towns, any special assessment made and levied to defray the cost and expenses of special improvements constitutes a lien upon all property included in an improvement district, but, under the provisions of section 84-1161, such a lien is extinguished by the issuance of a tax deed on sale of the property for delinquent taxes. (State

ex rel. City of Great Falls v. Jefferies, 83 M 111, 270 P 638). *Stanley v. Jefferies*, 86 M 114, 124, 284 P 131.

Tax Deed Extinguishes Special Improvement Assessments Payable before Its Execution

A general tax lien and a special improvement assessment lien are not of equal rank. Support of government is higher obligation than cost of local improvement. Where a special assessment for city improvement became delinquent on Nov. 30, 1940 and was certified by the city to the county clerk on Dec. 7, 1940 and by the county treasurer entered upon the tax rolls as a lien against the property, a county tax deed issued on Dec. 23, 1940 extinguished the lien for the 1940 installment of the city special improvement assessment, because under section 84-4170 such assessment installment was payable before execution of the tax deed. Instant case not violative of section 11, article III of the constitution. *Hartman v. Nimmack*, 116 M 392, 395, 154 P 2d 279.

References

Thomas v. City of Missoula, 70 M 478, 483, 226 P 213; *State ex rel. Costello v. District Court*, 86 M 387, 391, 392, 284 P 128; *Thibodo v. United States*, 187 F 2d 249, 256; *United States v. Christensen*, 218 F Supp 722, 726.

Collateral References

Municipal Corporations 519 (1).
63 C.J.S. Municipal Corporations § 1564
et seq.

48 Am. Jur. 724, Special or Local Assessments, § 194 et seq.

Priority as between liens for public improvements, 5 ALR 1301 and 99 ALR 1478.

Priorities between lien of general taxes

and the lien of special assessments, 65 ALR 1379.

Constitutionality of statute giving priority to lien for public improvements over pre-existing liens, 78 ALR 513.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment, 114 ALR 399.

11-2230. (5248) Mistakes or misnomers not to invalidate assessment. When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable.

History: En. Sec. 24, Ch. 89, L. 1913;
re-en. Sec. 5248, R. C. M. 1921.

Collateral References

Municipal Corporations 480.
63 C.J.S. Municipal Corporations § 1441.

11-2231. (5249) Form of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No.
United States of America,
State of Montana

Warrant or Dollars
(Bond No.) \$.....
Interest at the rate of per cent per annum, payable annually.
Special improvement district coupon warrant or bond
....., Montana

Issued by the city of, Montana.

The treasurer of the city of, Montana, will pay to bearer, the sum of dollars as authorized by resolution No. as passed on the day of, 19...., creating special improvement district No. for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of, Montana.

This warrant (or bond) bears interest at the rate of per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

1973 SUP

(seal)

Dated at _____, Montana, this ____ day of _____, 19____.
City of _____, Montana.

By: _____, Mayor
_____, City Clerk

Registered at the office of the city treasurer of _____, Montana,
this _____ day of _____, 19____.

_____, City Treasurer

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred (\$100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

1973 SUPP

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six (6%) per cent per annum" after "and shall bear interest" near the beginning of the first sentence of the paragraph following the form for bonds and warrants.

Bonds of Improvement District Not General Obligations

Special improvement district bonds are not a general obligation of the city or town. *State ex rel. Truax v. Town of Lima*, 121 M 152, 193 P 2d 1008, 1010.

Contracts May Not Exceed Approximate Estimate

The amount of the contract for improvements cannot legally exceed by seven and one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. *Koich v. City of Helena*, 132 M 194, 315 P 2d 511.

Interest May Be Fixed at Six Per Cent

Under this section, specifying that the rate of interest on special improvement district bonds in cities "shall not exceed six per cent per annum," the city council could properly fix the rate of interest at the rate named, as against the contention that under the above provision it is impossible to fix the rate definitely and that therefore interest could not lawfully be considered a part of the cost of the improvement. *Hansen v. City of Havre*, 112 M 207, 218, 114 P 2d 1053.

Mandamus To Pay Principal Held Up for Payment of Interest after Maturity

Where court refused mandamus proceedings on the ground that under this section the treasurer was required to first pay all the accrued interest on outstanding bonds before payment of any principal, held, on appeal, that assessments could not provide a fund for payment of interest after maturity of the bonds, and that plaintiff was entitled to payment of the principal of the bond sued upon, but not to interest accrued thereon after maturity. *State ex rel. Griffith v. City of Shelby*, 107 M 571, 576, 87 P 2d 183.

Misapplication of Fund by Treasurer

The office of city treasurer is a continuing one regardless of the person occupying the office at any particular time; the treasurer is the servant of the city, and where he misapplies trust funds such as for special improvement purposes, the municipality is liable to the warrant holders, and such liability is not lending its credit in violation of section 1, article XIII of the constitution. *Blackford v. City of Libby*, 103 M 272, 278, 280, 62 P 2d 216.

Not Intended To Include Interest Accrued after Maturity

In view of the speculative and indeterminable item of cost of a prospective special city improvement arising from possible delinquencies in the payment of assessments, the legislature, in providing in this section that before the city treasurer shall pay the principal of bonds issued he must first pay out of the special improvement district fund the interest on all outstanding bonds, could not have intended to include interest accrued on outstanding bonds after maturity. *State ex rel. Griffith v. City of Shelby*, 107 M 571, 576, 87 P 2d 183.

Statute of Limitations, on Recovery—Trust Rule

The statute of limitations does not begin to run against registered city warrants (or bonds) until the city treasurer calls them for payment, or until the holder has an immediate cause of action. Being a trust fund, under the rule that as between trustee and beneficiary of an express and continuing trust, the statute of limitations does not begin to run until trust is repudiated, and the beneficiary has received notice thereof. *Blackford v. City of Libby*, 103 M 272, 281, 282, 62 P 2d 216.

Treasurer Not Agent of Warrant Holders

The city treasurer is not the agent of the warrant holders, but is the servant of the city, and the city must answer for the illegal acts of its servants. Special improvement district moneys constitute trust funds, and are in the hands of municipal officials in trust. The municipality is merely a custodian, and its duties relative to such funds are purely ministerial. It may not use or divert them. *Blackford v. City of Libby*, 103 M 272, 278, 62 P 2d 216.

Where Action Held Maintainable To Recover on Warrants Paid Out of Order by County Treasurer

While the rule as to a city's liability to warrant holders damaged by reason of their warrants being paid out of order does not generally apply to county warrants, held, that where the county commissioners created a special improvement district within an unincorporated town for the installation of waterworks, the county assumed the same duties as rest upon incorporated cities and towns, and therefore were properly held liable for damage sustained by a holder of warrants not paid in the order of registration where the special fund became exhausted, and holder could presume treasurer would do his duty by calling and giving notice. *Witter v. Phillips County*, 111 M 352, 355, 109 P 2d 56.

References

State ex rel. Clark v. Bailey, 99 M 484,
41 P 2d 740.

Collateral References

Municipal Corporations—896 et seq.,
923 et seq.
64 C.J.S. Municipal Corporations §§ 1892,
1935 et seq.

11-2232. (5250) Payments under contracts. The city or town council shall provide for making payments for improvements in any special improvement district by the following method:

The city or town council shall sell bonds or warrants issued under the provisions hereof, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash, for not less than the face value of such bonds, or warrants, and including interest thereon, and shall use the proceeds of such sale in making payment to the contractor, or contractors, and such payment may be made either, from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council. The provisions of sections 11-2313, 11-2314 and 11-2315 with regard to the notice of sale, publication of notice and manner and method of selling bonds by cities and towns, in so far as the same are applicable thereto and not in conflict with the provisions of this section, shall apply to, govern and control the form of notice of sale, publication of notice and manner and method of selling such bonds or warrants.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R. C. M. 1921; amd. Sec. 1, Ch. 46, L. 1927; amd. Sec. 1, Ch. 178, L. 1945.

Contracts May Not Exceed Approximate Estimate

The amount of the contract for improvements cannot legally exceed by seven and one-half per cent the "approximate estimate of the cost thereof" as included in the resolution of intention. Koich v. City of Helena, 132 M 191, 315 P 2d 811.

Issuance of Bonds at Discount

City council has no power to issue bonds or warrants at a discount in payment of

special improvement work, and a contract let to one who in making out his bid took into consideration the fact that the warrants he would receive were worth only ninety cents on the dollar, and therefore added ten per cent to the actual cost, was invalid as an attempt to do indirectly what the council was prohibited from doing directly. Evans v. City of Helena, 60 M 577, 588, 199 P 445.

Collateral References

Municipal Corporations—370, 897, 911.
63 C.J.S. Municipal Corporations § 1203 et seq.; 64 C.J.S. Municipal Corporations §§ 1892, 1907 et seq.

11-2233. (5251) Collection of city taxes and assessments by county treasurer—certification. It shall be the duty of city or town treasurer of every city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of section 84-4729 immediately after the second Monday of August of each year and at the same time the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by said section 84-4729, to certify to the county assessor of the county in which such city or town is situated, all special assessments and taxes levied and assessed in accordance with any of the provisions of this act. The county assessor shall thereupon enter same upon the assessment roll of the county. The county

treasurer must collect all such taxes and assessments in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; amd. Sec. 1, Ch. 13, L. 1945.

Collection by City Treasurer

Assessments for special city improvements which under this section the county treasurer is required to collect, held to fall within the meaning of the words "tax" and "taxes" as employed in section 84-4726, making it the duty of the county treasurer to collect city taxes where a city has not imposed that duty upon its own treasurer. State ex rel. City of Wolf Point v. McFarlan, 78 M 156, 161, 252 P 805.

References

Gagmon v. City of Butte, 75 M 279, 287, 243 P 1985; State ex rel. City of Great Falls v. Jeffries, 83 M 111, 114, 270 P 638; School District No. 1 v. City of Helena, 87 M 300, 307, 287 P 164; State ex rel. Clark v. Bailey, 99 M 484, 44 P 2d 740.

Collateral References

Municipal Corporations 523.
63 C.J.S. Municipal Corporations § 1583.
48 Am. Jur. 731, Special or Local Assessments, § 204 et seq.

11-2234. (5251.1) City treasurer to collect special assessments, when. In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, such city or town treasurer shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this act, in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him; and all of the provisions of section 84-4727 of this code, shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes. When one payment becomes delinquent all payments shall, at the option of the city or town council, by appropriate resolutions duly adopted become delinquent, and the whole property shall be sold the same as other property is sold for taxes.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929.

References

State ex rel. Freebourn v. Yellowstone County, 108 M 21, 28, 83 P 2d 6.

Collateral References

Municipal Corporations 530, 548.
63 C.J.S. Municipal Corporations § 1585.

Power of municipality to transfer or assign its right to enforce assessment or lien for local improvements. 55 ALR 667.

Prior judgment as precluding reassessment for public improvement. 60 ALR 513.

Enforcement of assessment by sale of railroad right of way. 82 ALR 425, 431.

Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid. 96 ALR 1275.

Forfeiture or sale of land to state or political subdivision for nonpayment of taxes as suspending right to enforce special assessment or improvement lien or running of limitation in that regard. 113 ALR 920.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment. 114 ALR 399.

Personal liability of property owner to pay assessments for local improvements. 127 ALR 551 and 167 ALR 1639.

When statute of limitation commences to run in actions to recover taxes because of omission of property from tax list. 131 ALR 822, 821.

Right of mortgagor or purchaser of equity of redemption to defeat lien of mortgage by acquisition of title at sale subsequent to mortgage for nonpayment of assessment for local improvement. 131 ALR 289.

Applicability of statute of limitations to action to enforce special assessments as

affected by question whether imposition or enforcement of the assessment is an exercise of a governmental function. 136 ALR 572.

11-2235. (5251.2) City treasurer may collect special assessments, when. Any city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer, in accordance with the provisions of sections 84-4729 and 84-4727 may, nevertheless, provide by ordinance for the collection by its city or town treasurer of all special assessments and taxes levied and assessed in accordance with any of the provisions of this act in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by the county treasurer and all of the provisions of section 84-4727 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes. When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments shall, at the option of the city or town council, by appropriate resolution, duly adopted, become delinquent, and such delinquent special assessments shall be certified to the county clerk of the county in which such city or town is situated, and the county treasurer must collect such delinquent special assessments and taxes in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him, and in case the same are not paid, the whole property shall be sold, the same as other property is sold for taxes.

History: En. Subd. (c), Sec. 5251, R. C. M. 1921 by Sec. 1, Ch. 78, L. 1929. See history of section 11-2233.

11-2236. (5251.3) Special assessments, when payable. All special assessments, or installments of special assessments in cities and towns, duly and regularly levied by resolution, according to law, shall be payable on or before 6 o'clock p. m. on the 30th day of November of each year, and in event the same are not paid on or before said date, the same shall be subject to the same interest and penalties for nonpayment as are or may hereafter be provided by the laws of the state of Montana for other delinquent taxes.

History: En. Subd. (d), Sec. 5251, R. C. M. 1921 by Sec. 1, Ch. 78, L. 1929. See history of section 11-2233.

Collateral References

Municipal Corporations 518 (1), 524.
63 C.J.S. Municipal Corporations §§ 1578, 1579.

11-2237. (5251.4) Delinquent assessments may be reinstated. When any special assessment, or installment, or installments of special assessments, have become delinquent, and are so declared by appropriate resolution by the city or town council, and have been certified to the county clerk and county treasurer for collection, as herein provided, the city or town council may, nevertheless, at its option, upon the payment to the city treasurer of the assessment, or the installment or installments of special assessments, and interest, up to date, by appropriate resolution, be withdrawn from the county treasurer, and canceled from his records and proceedings, and reinstated in the office of the city treasurer and on the assessment book thereof. Said withdrawal and reinstatement may be had

and made at any time before or after sale of the property for delinquent taxes, and before tax deed therefor has been executed, the certified copy of the resolution of the city or town council with reference to such payment, withdrawal and reinstatement filed with the county treasurer shall be authority to and for the county treasurer to cancel and withdraw said delinquent special assessments or any installments thereof.

History: En. Subd. (c), Sec. 5251, R. C. M. 1921 by Sec. 1, Ch. 78. L. 1929. See history of section 11-2233.

Collateral References
Municipal Corporations \S 522.
63 C.J.S. Municipal Corporations \S 1573.

11-2238. (5252) Correction of assessment—collection upon relevy of tax. Whenever, by reason of any alleged nonconformity to any law or ordinance, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the council may make all necessary orders and ordinances, and may take all necessary steps to correct the same and to reassess and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance, or resolution relating thereto; and may reassess and relevy the same with the same force and effect as an original levy; whenever any apportionment or assessment is made, and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon reassessment or relevy shall, so far as is practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provisions of any law or ordinance specifying a time when, or order in which acts shall be done in a proceeding which may result in a special tax, shall be taken to be subject to the qualifications of this act. Any and every ordinance, or part thereof, of any council, heretofore passed in substantial conformity with this section, is hereby legalized.

History: En. Sec. 23, Ch. 89, L. 1913; re-en. Sec. 5252, R. C. M. 1921.

Construction of Section

This section does not authorize the reassessment of any of the property in a special improvement district to make up for delinquent assessments against other property. Its provisions have to do with the correction of invalid or erroneous assessment by reassessment. A reassessment cannot be made unless authorized by statute, and then only in the manner provided. *School District No. 1, v. City of Helena*, 87 M 300, 312, 257 P 161.

Reassessments

This section does not authorize reassess-

ments to make up for delinquent assessments. *State ex rel. Truax v. Town of Lima*, 121 M 152, 193 P 2d 1008, 1013.

Collateral References

Municipal Corporations \S 514 (1), (2).
63 C.J.S. Municipal Corporations \S 1541 et seq.

Prior judgment as precluding reassessment for public improvement. 60 ALR 513.

Statute authorizing or requiring reassessment for public improvement when original assessment is invalid or void as applicable when proceedings leading to original assessment were without jurisdiction. 83 ALR 1190.

11-2239. (5253) Payment of tax under protest—action to recover. When any tax levied and assessed under any of the provisions of this act is deemed unlawful by the party whose property is thus taxed, or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest, to the city or county treasurer, as the case may be, and thereupon such party so paying, or his legal represent-

ative, may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid, or against the city in whose behalf the same was collected, to recover such tax or any portion thereof, so paid under protest; provided, however, that any action instituted to recover any tax paid under protest must be commenced within sixty days after the date of payment thereof. The tax so paid under protest shall be held by the city or county treasurer, as the case may be, until the determination of any action brought for the recovery thereof.

History: En. Sec. 29, Ch. 89, L. 1913; re-en. Sec. 5253, R. C. M. 1921.

precedent to his right to maintain the action. *Harvey v. Town of Townsend*, 57 M 497, 188 P 897.

Recovery of Tax Paid under Protest

Plaintiff, in an action to recover back a special improvement tax paid under protest, need not allege in the complaint that his claim had been presented to the city or town council for allowance before action was commenced, this section not contemplating presentation thereof as a condition

Collateral References

Municipal Corporations—523 (4), (5).
63 C.J.S. Municipal Corporations § 1575 et seq.
48 Am. Jur. 764, Special or Local Assessments, § 261 et seq.

11-2240. (5254) Mistake in name or description not fatal. Any mistake in the description of the property or the name of the owner shall not vitiate any liens created by this act, unless it is impossible to identify the property from the description.

History: En. Sec. 30, Ch. 89, L. 1913; re-en. Sec. 5254, R. C. M. 1921.

Collateral References

Municipal Corporations—479, 480.
63 C.J.S. Municipal Corporations § 1439 et seq.

11-2241. (5255) Owner of property—definition of terms—publication of notice. (1) The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lot and lands, by deeds duly recorded in the county recorder's office in each county, or the person in possession of lands, lots, or portions of lots, or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" for the purpose of this act, according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

(2) The words "work," "improved," and "improvement," as used in this act, shall include all work or the securing of property mentioned in this act, and also the construction, reconstruction, and repairs, of all or any portion of said work.

(3) The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also the cost of printing and advertising, as provided in this act; also, the compensation of the persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant.

(4) The notices, resolutions, orders, or other matter required to be published by the provisions of this act, shall be published in a daily newspaper or in a semiweekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that in case there is no daily, semiweekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semiweekly, or weekly newspaper, in three of the most public places in such city except herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer, or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein. The word "twice," as used in this act, referring to the number of times notices, resolutions, or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

(5) The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

(6) The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadam, or of bituminous rock or asphalt, or of wood, brick, or other material, whether patented or not, which the city council shall by ordinance or resolution adopt.

(7) The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts, and places, which have been dedicated and accepted according to the law, or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

(8) The term "city engineer," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no city engineer, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of the city engineer, and all provisions hereof applicable to the city engineer shall apply to such person so appointed.

(9) The term "city council" is hereby declared to include any body or board which under the law is the legislative department of the government of the city.

(10) In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the council or other chief executive officer of the municipality.

(11) The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said council.

(12) The term "quarter-block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street halfway from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

(13) The term "city treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

(14) The term "street intersection," wherever used in this act, shall be held to mean that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

History: En. Sec. 31, Ch. 89, L. 1913;
re-en. Sec. 5255, R. C. M. 1921.

Notice Must Be Published Rather than Posted if Possible

The obvious intent of the legislature as declared by subsection (4) of this section was to permit posting of notice only when publication could not be made in the city, and whenever there is a newspaper published in the city, whether "daily," "semiweekly" or "weekly," publication therein should take precedence over notice by posting. *Hansen v. City of Havre*, 112 M 207, 213, 114 P 2d 1053.

Publication each day from Tuesday through Saturday, inclusive, in a paper published only five days in the week was sufficient to meet the requirements of this section and section 11-2204. *Hansen v. City of Havre*, 112 M 207, 213, 114 P 2d 1053.

Publication of Notice

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its establishment on the ground of failure to publish notice in successive issues of a newspaper. *Guffey v. City of Helena*, 140 M 211, 369 P 2d 803, 806.

Collateral References

Municipal Corporations—265 et seq.
63 C.J.S. Municipal Corporations § 1036 et seq.

48 Am. Jur. 693, Special or Local Assessments, § 151 et seq.

Scope and import of term "owner" with respect to giving notice of making of public improvement. 95 ALR 1085, 1091.

11-2242. (5256) **Adjournment of hearing by council.** Whenever, in proceedings hereunder, a time and place for hearing by the city council are fixed, and, from any cause, the hearing is not then and there held or regularly adjourned to a time and place fixed, the power or jurisdiction of the city council in the premises shall not thereby be divested or lost, but the city council may proceed anew to fix a time and place for the hearing, and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act as in the first instance.

History: En. Sec. 32, Ch. 89, L. 1913;
re-en. Sec. 5256, R. C. M. 1921.

Collateral References

Municipal Corporations 298, 402 (5),
455, 491.

63 C.J.S. Municipal Corporations §§ 1102,
1270, 1329, 1478.

11-2243. (5257) Posting and publication of notices by clerk—effect of errors in proceedings. Whenever any resolution, order, notice, or determination is required to be published or posted, and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder, when the same is actually published or posted for the time herein required.

History: En. Sec. 31, Ch. 89, L. 1913;
re-en. Sec. 5257, R. C. M. 1921.

lished for the time required by the act.
Aiken v. City of Glendive, 60 M 1, 2, 197
P 1003.

Error in Publication of Notice

Under this section any error in or departure from the mode of publication of any notice incident to the creation of a special improvement district is insufficient to invalidate the proceedings, when it appears that the notice was actually pub-

Collateral References

Municipal Corporations 169, 294 (8) et
seq.

62 C.J.S. Municipal Corporations § 514;
63 C.J.S. Municipal Corporations § 1091 et
seq.

11-2244. (5258) Curative section concerning special improvements. All special improvement districts which any city or town council in the state of Montana has created or attempted to create since March 14, 1913, pursuant to the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, the creation or attempted creation of which was irregular because of the failure of any such city or town council, so creating or attempting to create the same, to proceed in the creation of any such districts, or in giving notice thereof, in the manner required by chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and any and all bonds and warrants issued or to be issued to defray the cost and expense incurred, or to be incurred in the construction of the improvements made or to be made in any such districts, and the assessments levied or to be levied in any such districts, are hereby legalized and validated, and the acts and proceedings of the city or town council of any such city or town done or had with reference thereto are hereby made of as binding force and effect, as though they were done and had in strict conformity with the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; provided, however, that a resolution of intention to create, or a resolution creating or attempting to create any such district, was duly and properly passed and adopted by the city or town council of any such city or town, and approved by the mayor thereof, prior to giving notice thereof; and provided, further, that notice of the passage of such resolution of intention to create, or resolution creating or attempting to create any such district, or notice of the creation or intention to create or attempted

creation of any such district, and of the time and place when and where the city or town council of any such city or town would hear and pass upon all protests made by any owner of property in any such district liable to be assessed for the work done or proposed to be done therein, against the making of such improvement, or the creation of any such district, and describing the general character of the improvements proposed to be made, the estimated cost thereof, and referring to the resolution on file in the office of the city or town clerk of any such city or town, for the description of the boundaries of any such district, was published for five days in a daily newspaper, or in some one issue of a weekly paper published in any such city or town, or in case no newspaper was published in any such city or town, at the time such notice was given, then, provided, it was posted for five days in three public places in such city or town; and provided, further, that a copy of such notice so published or posted was mailed to every person, firm, or corporation, or to the agent of every person, firm, or corporation, having property within any such district, at his last known address, upon the same day such notice was first published or posted; and provided, further, that said notice was published or posted and mailed on a day not less than fifteen days prior to the date set for hearing and passing upon all protests made in any such district; and provided, further, that at the next regular meeting of the city or town council of any such city or town after the expiration of said fifteen days, the city or town council of any such city or town, proceeded to hear and pass upon, and did hear and pass upon all protests made in any such district; and provided, further, that no sufficient protests were made in any such district to prevent further proceedings therein, as provided in chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done, and had by the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana for the letting of any contract for the construction of any improvements in any such district, and the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done, and had by said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, for the issuance and delivery or sale of any bonds or warrants of any such district were or shall be duly and regularly passed, adopted, approved, given, done, and had in conformity with the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, and the laws of the state of Montana relating thereto; and provided, further, that the assessment to defray the cost of making the improvements in any such district was or shall be duly and regularly passed, adopted, and approved, and notice thereof duly and regularly given, and a copy of the resolution levying any such assessment, certified to by the city or town clerk, delivered to the city or town treasurer of any such city or town, within two days after its final passage, as required by the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that the sum levied and assessed, or to be levied and assessed, against the property of any such district did not or

shall not exceed the cost and expense of making the improvements therein; and provided, further, that the improvements made or to be made in any such district are improvements which a city or town can legally make under the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that nothing herein contained shall be deemed to affect or disturb rights acquired under any judicial decision made in any cause involving the procedure of any special improvement district created or attempted to be created under the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana.

History: En. Sec. 9, Ch. 142, L. 1915; re-en. Sec. 5258, R. C. M. 1921.

NOTE.—Chapter 89 of the acts of the thirteenth legislative assembly, referred to in this section, is compiled as sections 11-2201, 11-2202, 11-2201 to 11-2214, 11-2216, 11-2222 to 11-2233, 11-2238 to 11-2243.

Construction of Section

Defects in the proceedings necessary to confer jurisdiction upon the city council to create a special improvement district, such as in the passage of a resolution of

intention, giving notice of its passage, etc., are not cured by the provisions of this section. *Cooper v. City of Bozeman*, 54 M 277, 285, 169 P 801.

References

Hinzeman v. City of Deer Lodge, 58 M 369, 374, 193 P 295.

Collateral References

Municipal Corporations 515 (1).
62 C.J.S. *Municipal Corporations* § 410 (1).

11-2245. (5259) Special improvement districts for lighting streets—apportionment of cost. The city or town council of any city or town is authorized to create special improvement districts embracing any street or streets or public highway therein, or portions thereof, and property adjacent thereto, or property which may be declared by said council to be benefited by the improvement to be made, for the purpose of lighting such street or streets or public highway, and to require not more than three-fourths ($\frac{3}{4}$) and not less than one-fourth ($\frac{1}{4}$) of the cost of installing and maintaining such lighting system to be paid by the owners of the property embraced within the boundaries of such districts, and to assess and collect such portion of such cost by special assessment against said property.

History: En. Sec. 1, Ch. 143, L. 1915; re-en. Sec. 5259, R. C. M. 1921; amd. Sec. 1, Ch. 143, L. 1927.

NOTE.—Chapter 98, Laws of 1911, an act regulating the creation of lighting districts, was repealed by chapter 143, Laws of 1915, which is here given.

Electric Lighting System

An improvement district may be created for the purpose of maintaining a system owned by a corporation or individual and the furnishing of electrical current therefor. *Marchi v. Brackman*, 130 M 228, 299 P 2d 761, 764. (Concurring and dissenting opinion, 130 M 228, 299 P 2d 761, 767.)

A special improvement district created under this section for the purpose of lighting the streets included within its boundaries may not be utilized to require the pay-

ment of maintenance costs, which in truth and in fact are not the cost of maintenance at all, but are rather designed to reimburse the power company for its own costs incurred in installing its own lighting system. *Marchi v. Brackman*, 130 M 228, 299 P 2d 761, 766. (Dissenting opinion, 130 M 228, 299 P 2d 761, 767.)

References

Helena Light & Ry. Co. v. City of Helena, 47 M 18, 34, 130 P 416; *School District No. 1 v. City of Helena*, 87 M 309, 308, 287 P 164.

Collateral References

Municipal Corporations 272, 450 (1).
62 C.J.S. *Municipal Corporations* §§ 1952, 1359 et seq.
48 Am. Jur. 610, *Special or Local Assessments*, §§ 57-76.

Power to impose cost of maintenance or operation of street lighting system on local improvement district. 60 ALR 272.
 Liability of municipal corporation for injury or death occurring from defects in,

or negligence in construction, operation, or maintenance of its electric street-lighting equipment, apparatus, and the like. 19 ALR 2d 344.

11-2246. (5260) Apportionment of costs—assessments. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, not less than one-fourth ($\frac{1}{4}$) nor more than three-fourths, ($\frac{3}{4}$) as shall be determined by the city or town council, shall be borne by the property embraced within said district, and the city or town council for the purpose of making the assessment shall adopt one of the two (2) following methods:

(a) The city council shall assess the entire cost of such improvement against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any district, provide that whenever any of the improvements herein provided for shall be along any side street, or bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within any such corner lot, shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

(b) The city council shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district bordering or abutting upon the street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the districts.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R. C. M. 1921; amd. Sec. 2, Ch. 143, L. 1927.

References

School District No. 1 v. City of Helena, 87 M 300, 308, 287 P 164.

Collateral References

Municipal Corporations 168, 469 (1).
 63 C.J.S. Municipal Corporations §§ 1426, 1427 et seq.

11-2247. (5261) Resolution of intention—notice—protest—hearings—installation of system. (1) Before creating any special improvement lighting district in any such city or town, for the purpose of lighting any street or streets or public highway, or section thereof, in accordance with the provisions of this act, the city council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements to be made and an approximate estimate of the cost thereof; also an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first (1st) year, and the proportion of such cost to be assessed against the property embraced within the district.

(2) Upon having passed such resolution, the council must give notice of the passage of such resolution of intention, which notice of the passage of such resolution must be published for five (5) days in a daily newspaper or in some one issue of a weekly newspaper in the city or town, or in case no newspaper be published in such city or town, then by posting for five (5) days in three (3) public places in the city or town, and a copy of such notice shall be mailed to every person, firm or corporation having property within the proposed district, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement so proposed to be made and state the estimated cost thereof; also the estimated cost of maintaining the lights and supplying the electrical current therefor within such district for the first (1st) year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvement or the creation of such district, and such notice shall refer to the resolution on file in the office of the city clerk for a description of the boundaries.

(3) At any time within fifteen (15) days after the date of the first publication of the notice of passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed or both. Such notice must be in writing and be delivered to the said clerk of the city council, who shall endorse thereon the date of its receipt by him.

(4) At the next regular meeting of the city council, after the expiration of the time within which said protests may be so made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work and the cost thereof is to be assessed upon property embraced within the boundaries of the district, and if the city council finds that such protest is made by the owners of a majority of the property embraced within the district to be assessed for the proposed work, no further proceedings shall be taken for a period of six (6) months from the date when said protest was received by the said city clerk of said city council.

(5) In determining whether or not sufficient protest has been filed in a proposed district to prevent further proceedings therein, property owned

by a county, city or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time.

(6) When no protests have been delivered to the clerk of the city council within fifteen (15) days after the date of the first publication of the notice of the passage of the resolution of intention, or when a protest shall have been found by the city council to be insufficient or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements; but before ordering any of said proposed improvements, the city council shall pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

(7) The city or town council may cause the posts, wires, pipes, conduits, lamps or other suitable and necessary appliances, for the purpose of lighting said streets, to be procured and erected by contract or by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide, and after such lighting system has been installed, may, by contract, in such way and manner as the council shall elect, cause the lights to be maintained thereon and electrical current furnished therefor; provided that the posts in any such district shall be of uniform size and character and shall be distributed uniformly upon the street or streets or public highways, or section thereof, to be lighted in any such district.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R. C. M. 1921; amd. Sec. 3, Ch. 113, L. 1927.

References

School District No. 1 v. City of Helena, 87 M 300, 308, 287 P 164; Marchi v. Brackman, 130 M 228, 299 P 2d 761, 765.

Collateral References

Municipal Corporations 293 (1) et seq.
63 C.J.S. Municipal Corporations § 1093 et seq.

11-2248. (5262) **Objections to irregular proceedings.** At any time within sixty days from the date of the award of any contract by a city or town council under the provisions of this act, or at any time within sixty days from the date, the city or town council requires or instructs the street commissioner, or any other official of the city or town, to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets of said city or towns, to be procured and erected, any owner or other person having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous or faulty, or that his property will be damaged by the making of any improvements in the manner contemplated, may file with the city clerk, who shall deliver the same to the city or town council, a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. All objections to any act or proceeding, or in relation to the making of said im-

provements not made in writing and in the manner at the time aforesaid, and all claims for damage therefor, shall be waived by such property owners; provided, the notice of the passage of the resolution of intention has been actually published, and the notices of improvements posted as provided in this act.

History: En. Sec. 3(a), Ch. 243, L. 1921; re-en. Sec. 5262, R. C. M. 1921.

Collateral References
Municipal Corporations 316, 318, 488
(1).
63 C.J.S. Municipal Corporations §§ 1130, 1474.

11-2249. (5263) Bonds and warrants—interest—redemption. All cost and expenses incurred in the construction of the improvement specified in this act shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance drawn against a fund to be known as "Special Improvement Lighting District No. ——— Fund." Said warrants or bonds shall be in the denomination of one hundred dollars (\$100) or fractions or multiples thereof; and may be issued in installments. Such warrants or bonds shall be redeemed by the treasurer when there is money in the fund against which said warrants or bonds are issued available therefor, and may extend over a period not to exceed eight (8) years, and shall bear interest from the date of registration thereof, until called for redemption or paid in full, interest to be payable annually on the first day of January of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk. The requirements of this section shall apply to all special improvement lighting districts, including those now in the process of formation or to be formed hereafter.

1973 SUPP

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1917; amd. Sec. 18, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six per cent (6%) per annum" after "shall bear interest" in the third sentence; and made minor changes in style.

11-2250. (5264) Preparatory expense—accounts by engineer. The cost and expense connected with and incidental to the formation of any such district, including the cost of preparation of plans, specifications, maps, plats, engineering, superintendence, and inspection, including the compensation of the city engineer for work done by him, and the cost of printing and advertising as provided in this act, and the preparation of assessment rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the city clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 5, Ch. 143, L. 1915;
re-en. Sec. 5264, R. C. M. 1921.

Collateral References
Municipal Corporations \S 460.
63 C.J.S. Municipal Corporations \S 1411
et seq.

11-2251. (5265) Assessing cost of system—resolution—hearings—funds. It shall be the duty of the city or town council to ascertain the cost of installing such lighting system, and on or before the first Monday in October pass and finally adopt a resolution levying and assessing all of the property embraced within said district with not less than one-fourth ($\frac{1}{4}$) nor more than three-fourths ($\frac{3}{4}$) of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in section 11-2246 hereof. Any such resolution shall contain a list in which shall be described each lot or parcel of land, and either the total number of square feet of property contained therein or the total number of linear feet abutting the improvements as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite. Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining said lights and supplying electrical current therefor for the first (1st) year, as determined by the city or town council, is on file in his office subject to inspection for a period of five (5) days, shall be published at least once in a newspaper published in the city. Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the city or town council, and the time for such hearing shall not be less than five (5) days after the publication of such notice. At the time so fixed the council shall meet and hear all such objections and for the purpose may adjourn from day to day, and may modify such resolution in whole or in part. A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within two (2) days after its passage to the city treasurer. All moneys derived from the collection of such assessments shall constitute a fund to be known as "Special Improvement Lighting District No. Fund."

History: En. Sec. 6, Ch. 143, L. 1915;
re-en. Sec. 5265, R. C. M. 1921; amd. Sec.
4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L.
1929.

Collateral References
Municipal Corporations \S 449 (1-4), 455.
63 C.J.S. Municipal Corporations \S 1391,
1399.

References

School District No. 1 v. City of Helena,
87 M 300, 308, 287 P 164; Marchi v. Brack-
man, 130 M 228, 299 P 2d 761, 766.

Power to impose cost of maintenance
or operation of street lighting system on
local improvement district. 60 ALR 272.

11-2252. (5266) Maintenance of system—assessment of costs. (1) The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect; provided, however, that the city or town council shall not let a contract for a period to exceed three (3) years. It shall be the duty of the city or town council to estimate, as nearly as practicable, the cost of maintaining such lights and furnishing electrical current therefor each year, and the portion

thereof to be assessed against the property embraced within the district, and before the first Monday in October pass and finally adopt a resolution levying and assessing said property within said district with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be especially assessed against said property, and may further, until full liquidation is realized, include therein an amount not to exceed twenty per centum (20%) of any floating indebtedness, consisting of valid outstanding warrants drawn and issued against the maintenance funds of the several districts, existing at the close of business on the 30th day of June, 1943, together with not to exceed such per centum of the current interest thereon from such last mentioned date, which moneys derived from such portion of such levy and assessment for such additional amount, if included in such levy and assessment, may only be expended towards liquidating such floating indebtedness, together with the interest thereon, and not otherwise.

(2) Said resolution levying and assessing said portion of the cost of maintenance, and for furnishing electrical current therefor, including such additional amount, if any, towards liquidation of such floating indebtedness, shall be prepared and certified to in the same manner as the resolution provided for in the preceding section, and the same notice and hearing shall be given thereon, and shall be adopted and certified, and the assessment collected, in the same manner, as nearly as may be, in the case of the resolution provided for in the preceding section. All moneys derived from the collection of the assessment provided for in such resolution shall be paid into a fund known as "Special Improvement Lighting District No..... Maintenance Fund" and the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of current and the raising of such liquidating amount, if any, for which the tax is levied, and such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district, and, if such additional amount be included therein, towards the liquidation of such floating indebtedness, together with the interest thereon, as aforesaid, and for no other purpose; provided, however, that the city or town council shall have the power not more than once in a year to change by resolution the boundaries and number of any maintenance district but such change of boundaries shall not affect indebtedness existing at the time of such change.

(3) Any special assessment levied and made for any purpose aforesaid, together with all costs and penalties, shall constitute a lien upon and against the property upon which assessment is made and levied, from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest, or otherwise as provided by law.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; amd. Sec. 1, Ch. 162, L. 1943.

References

Marchi v. Brackman, 130 M 228, 299 P 2d 761, 765.

Collateral References

Municipal Corporations 449 (1-3), 450 (1), 519 (1), 897.

63 C.J.S. Municipal Corporations §§ 1359 et seq., 1391, 1564 et seq.; 64 C.J.S. Municipal Corporations § 1854.

11-2253. (5267) Effect of mistake as to ownership of property. When, under any of the provisions of this act, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable.

History: En. Sec. 8, Ch. 143, L. 1915; re-en. Sec. 5267, R. C. M. 1921.

11-2254. (5268) Remedies for correction of errors. All remedies, provisions, and means provided by existing laws or by the ordinances of any city availing itself of the provisions of this act for the correction of errors or omissions in the adoption of any resolution or proceeding, or in the levy of any assessment, or for the collection thereof, or for the enforcement of any such levy by sale of the property against which any assessment shall be made, or for the redemption of such property from such sale, or otherwise applicable to the administration of this act, shall be available in the administration hereof, the same to all intents and purposes as would be the case where such remedies, provisions, and means made a part hereof.

History: En. Sec. 9, Ch. 143, L. 1915; re-en. Sec. 5268, R. C. M. 1921.

Collateral References

Municipal Corporations 490.
63 C.J.S. Municipal Corporations §§ 1459, 1478.

11-2255. (5269) Procedure for discontinuance of system. If at any time after the creation of any special improvement lighting district a petition shall be presented to the city or town council, signed by the owners or agents of more than three-fourths (¾) of the total amount of property embraced within the district, asking that the maintenance and operation of such special lighting system and the furnishing of electrical current therefor, in such district, be discontinued, the city or town council shall thereupon, by resolution, provide for discontinuing the maintenance and operation of the lighting system; provided, however, that if the city or town council shall have, prior to the presentation of such petition, entered into any contract for the maintenance and operation of such lighting system, such maintenance and operation shall not be discontinued until after the expiration of the contract.

History: En. Sec. 10, Ch. 143, L. 1915; re-en. Sec. 5269, R. C. M. 1921; amd. Sec. 5, Ch. 143, L. 1927.

Collateral References

Electricity 11.
29 C.J.S. Electricity §§ 24-28, 29-37.

11-2256. (5270) Repealing and saving clauses. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that each and every special improvement lighting district created, or attempted to have been created, and each and every bond and warrant issued, and each and every assessment made and heretofore created under and by

virtue of any of the acts of 1911 and 1913, shall not be invalidated, but the same are hereby validated, legalized, and approved.

History: En. Sec. 11, Ch. 143, L. 1915;
re-en. Sec. 5270, R. C. M. 1921.

11-2257. (5271) Property of United States not liable for costs. Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall be included within the boundaries of the proposed special improvement lighting district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement and the cost of said work or improvement which would have been assessed against said lots shall be paid by the city from its general fund.

History: En. Sec. 12, Ch. 143, L. 1915;
re-en. Sec. 5271, R. C. M. 1921; amd. Sec.
6, Ch. 143, L. 1927.

Collateral References

Municipal Corporations 426.
63 C.J.S. Municipal Corporations § 1332.

References

School District No. 1 v. City of Helena,
87 M 300, 308, 287 P 164.

11-2258. (5271.1) Improvements within sprinkling districts. Cities and towns are hereby authorized and empowered to prepare and improve streets, avenues and alleys, within the sprinkling districts, so that the sprinkling and applying of water, oil, and salt or any other dust palliative or preventive will be of a durable and continuing benefit and the city or town council shall provide, by ordinance, a method, or methods, of doing said work and improvement.

History: En. Sec. 1, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations 269 (2).
63 C.J.S. Municipal Corporations
§§ 1012-1041.

11-2259. (5271.2) Power to borrow money from United States—repayment. Cities and towns are authorized to enter into suitable agreements with the United States of America for loans of money and for receiving financial assistance to do the work and improvements contemplated by section 11-2258, and to provide for the repayment thereof by yearly payments from funds derived from such sprinkling districts created under section 11-2258, apportioned over a period of time not exceeding twenty (20) years.

History: En. Sec. 2, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations 869.
64 C.J.S. Municipal Corporations § 1869.

11-2260. (5271.3) Maintenance of improvements. Cities and towns are authorized to maintain the work and improvements made under section 11-2258.

History: En. Sec. 3, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations 269 (1).
63 C.J.S. Municipal Corporations § 1013.

11-2261. (5271.4) Power to assess costs against property. Cities and towns are authorized to assess the cost of such work, improvements and maintenance against the property in such sprinkling districts in the manner and as provided in section 11-2267, to meet the payments required to be made each year.

History: En. Sec. 4, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations 413 (1).

63 C.J.S. Municipal Corporations § 1304 et seq.

11-2262. (5271.5) Notice of ordinance — publication — protests. At least fifteen (15) days must elapse between the day on which said proposed ordinance is introduced and the day on which final action thereon is taken. The city or town clerk must give notice of the introduction of such proposed ordinance, and of the time it will be up for passage, by publication three (3) times in a daily newspaper, or a newspaper printed and published every day except Sunday, or in a weekly newspaper for two (2) successive issues, in such city or town, or, if there be no such newspaper, then by posting for at least ten (10) days in three (3) public places in each of the wards of said city or town. If forty per cent (40%) or more of the abutting property owners protest in writing to said city or town council against the passage of said proposed ordinance, then no further action shall be taken thereon and the same shall lapse.

History: En. Sec. 5, Ch. 12, Ex. L. 1933.

Collateral References

Municipal Corporations 455.

63 C.J.S. Municipal Corporations § 1399.

11-2263. (5272) Street sprinkling. Whenever the council of any city or town desires to sprinkle all or any part of the streets or avenues of its city or town with water, oil, salt, or any other dust palliative, as provided in this chapter, it shall provide, by ordinance, a method of doing said work, and of paying for the same under the following restriction and regulations.

History: En. Sec. 24, p. 218, L. 1897; re-en. Sec. 3390, Rev. C. 1907; re-en. Sec. 5272, R. C. M. 1921; amd. Sec. 1, Ch. 97, L. 1927.

solou, 135 M 94, 337 P 2d 365; Peterson v. City of Missoula, 135 M 96, 337 P 2d 367.

References

Stadler v. City of Helena, 46 M 129, 135, 127 P 454; Griffith v. City of Butte, 72 M 552, 234 P 829.

Paving Projects

Where the work represents either a minor or major repaving or resurfacing project, it cannot be financed by special improvement taxes for the creation of a sprinkling district, but must be financed under section 11-2401. *Cyr v. City of Mis-*

Collateral References

Municipal Corporations 674.

64 C.J.S. Municipal Corporations § 1699.

11-2264. (5273) Street sprinkling—creation of districts. A resolution dividing the whole or any part of their city or town into sprinkling districts, to be known and designated by number, shall be passed; said resolution shall plainly define the boundaries of the several districts, or enumerate the streets, alleys, and public places, or any part thereof, constituting the different districts.

History: En. Sec. 25, p. 218, L. 1897; re-en. Sec. 3391, Rev. C. 1907; re-en. Sec. 5273, R. C. M. 1921.

Collateral References

Municipal Corporations 450 (1).
63 C.J.S. Municipal Corporations § 1359.

References

Griffith v. City of Butte, 72 M 552, 562,
234 P 829.

11-2265. (5274) Street sprinkling—change of district. When once defined, sprinkling districts shall not be changed during the same calendar year, but may be changed by resolution the following year, or any year thereafter.

History: En. Sec. 26, p. 218, L. 1897; re-en. Sec. 3392, Rev. C. 1907; re-en. Sec. 5274, R. C. M. 1921.

11-2266. (5275) Assessment to pay for work. The sprinkling in districts so established may be done by contract, or by forces employed by the city or town, or by both, in such manner as the council may elect, and it shall be the duty of said council to estimate, as near as practicable, the cost of sprinkling in such districts so established for the season, and before the first Monday in November of each year they shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to not less than seventy-five per cent of the entire cost of said work, exclusive of the cost of sprinkling parks and public places.

History: En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R. C. M. 1921.

Collateral References

Municipal Corporations 412.
63 C.J.S. Municipal Corporations § 1302.

11-2267. (5276) Assessment to pay for work—method of assessment. The assessments for the cost and expense of sprinkling streets shall be made against all of the property embraced within each sprinkling district by one of the three following methods:

1. **Frontage Basis.** Each lot or parcel of land within such district, abutting upon some street upon which sprinkling is done, shall be assessed for that part of the whole cost which its street frontage bears to the street frontage of the entire district.

2. **Area Basis.** Each lot or parcel of land within such district shall be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

3. **Combination of Frontage and Area Basis.** A portion of the total cost, to be assessed in each sprinkling district, may be assessed against the several lots or parcels of land within the district by Method No. 1 on a frontage basis, and the remainder of such cost by Method No. 2 on an area basis. The proportion to be assessed in each district by each such method shall be determined and fixed by the city or town council.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R. C. M. 1921; amd. Sec. 2, Ch. 97, L. 1927.

Collateral References

Municipal Corporations 468, 469 (1).
63 C.J.S. Municipal Corporations § 1126 et seq.

Assessments for improvements by the front-foot rule, 56 ALR 941.

11-2268. (5277) Assessment to pay for work—method of levy of assessment. The resolution levying the assessment to defray the cost of sprinkling shall contain a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof, if known, and the amount levied thereon set opposite; such resolution shall be kept on file in the office of the city clerk, and a notice signed by the city clerk, stating that the resolution levying special assessment to defray the cost of sprinkling in the several districts is on file in his office and subject to inspection for a period of five days, shall be published at least once in a newspaper published in a city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so set, the council shall meet at their regular place of meeting and hear all objections which may be made to such assessment, or any part thereof, and may adjourn from time to time, for that purpose, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer on or before the first Monday in October, and such assessment shall be placed upon the tax roll, and collected in the same manner as other taxes.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R. C. M. 1921.

Collateral References

Municipal Corporations—449 (3), 455.
63 C.J.S. Municipal Corporations
§§ 1391, 1399.

References

Stadler v. City of Helena, 46 M 128, 133, 135, 127 P 454.

11-2269. (5277.1) Special improvement district revolving fund. The city or town council or commission of any city or town which has heretofore created, or may hereafter create, any special improvement district or districts for any purpose, may in its discretion, as to such district or districts heretofore created, and shall, as to such district or districts hereafter created, in order to secure prompt payment of any special improvement district bonds or sidewalk, curb and alley approach warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by ordinance a fund to be known and designated as "Special Improvement District Revolving Fund."

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History: En. Sec. 1, Ch. 24, L. 1929; amd. Sec. 1, Ch. 255, L. 1971.

Amendments

The 1971 amendment inserted "sidewalk, curb and alley approach" before "warrants" in the latter part of the section.

Constitutionality—Validity as to Districts Created in Future, Invalidity as to Those Established in the Past

Held, that chapter 24, Laws 1929 (11-2269 to 11-2273) is not violative of section 1, article XIV, amendments to the federal constitution, or article V, section 26, article XIII, section 1 nor article XV, section 13 of the state constitution; held further, that assumption of liability for losses suffered under bonds and warrants issued prior to passage of the act is violative, but as to districts to be created in the future is not violative, of article XII, section 11, state constitution. Stanley v. Jeffries, 86 M 114, 123, 284 P 134.

Contention that sections 11-2269 to 11-2273, referring to the matter of special improvement district revolving funds, are in conflict with article XIII, section 1, contravene article V, section 26, and conflict with article XII, section 11 of the state constitution, held groundless under authority of the case of Stanley v. Jeffries, 86 M 114, 284 P 134. Hansen v. City of Havre, 112 M 207, 216, 114 P 2d 1053.

Bond Issues—Payment

Where a special improvement district was established under section 11-2202 and bonds were issued "payable from the collection of the special tax or assessment which is a lien against the real estate within said improvement district," the bonds

were not a general obligation of the town and the town could not be compelled to redeem the bonds from a water fund made up of water rentals from water users, even though the town may have had authority to make payments from such fund. State ex rel. Truax v. Town of Lima, 121 M 152, 193 P 2d 1008, 1010.

Collateral References

Municipal Corporations § 887.
64 C.J.S. Municipal Corporations § 1884.

Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid. 96 ALR 1275.

11-2270. (5277.2) Transfers from general fund and tax levy for revolving fund. For the purpose of providing funds for such revolving fund the city or town council

(1) may in its discretion, from time to time, transfer to the revolving fund from the general fund of the city or town such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered, and shall be, loans from such general fund to the revolving fund. and

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding special improvement district bonds or sidewalk, curb and alley approach warrants. 1973 SUPP

References

Hansen v. City of Havre, 112 M 207, 211, 114 P 2d 1053.

History: En. Sec. 2, Ch. 24, L. 1929; and. Sec. 2, Ch. 255, L. 1971.

Amendments

The 1971 amendment inserted "or side-

Right of municipal authorities temporarily to loan or transfer money from one fund or department to another. 70 ALR 431.

walk, curb and alley approach" before "warrants" at the end of subdivision (2); and made a minor change in phraseology.

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11-2271. (5277.3) Loans from revolving fund for paying improvement district bonds and warrants. (1) Whenever any special improvement district bond or sidewalk, curb and alley approach warrants, or any interest thereon, shall be, at the time of the passage of this act, or shall thereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon, or in the case of such bonds or warrants due at the time of the passage of this act, such part of the amount due on such bond or warrant, whether it be for principal or for interest or for both as the council may in its discretion elect or determine shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with any public offering of special improvement district bonds or sidewalk, curb and alley approach warrants, the city or town council may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 11-2270 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by said section 11-2270, which said undertakings and agreements shall be binding upon said city or town so long as any of said special improvement district bonds or sidewalk, curb and alley approach warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 24, L. 1929; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 158 and once by Ch. 255. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1971 acts.

Amendments

Chapter 158, Laws of 1971, deleted from the end of subsection (1) a proviso and a sentence requiring that the revolving fund be approved by the taxpayers. For prior text, see parent volume.

Chapter 255, Laws of 1971, inserted "sidewalk, curb and alley approach" before "warrants" near the beginning of subsection (1) and near the beginning and near the end of subsection (2); and made a minor change in phraseology.

11-2272. (5277.4) Lien for loans from revolving fund—surplus district funds transferred to revolving fund, investment of funds. Whenever any loan is made to any special improvement district fund or sidewalk, curb and alley approach warrants from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys

in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the council, be transferred to the revolving fund; and after all the bonds and warrants issued on any special improvement district or sidewalk, curb and alley approach warrants have been fully paid, all moneys remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

Surplus reserves not needed for immediate use, may from time to time be invested in securities of the United States or certificates of deposit, approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929; amd. Sec. 4, Ch. 255, L. 1971.

walk, curb and alley approach warrants" in two places in the first paragraph; and added the second paragraph.

Amendments

The 1971 amendment inserted "or side-

11-2273. (5277.5) Use of excess moneys in revolving fund. Whenever there is in the revolving fund an amount in excess of the amount which the council deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the council may

(1) by vote of all of its members at a meeting called for that purpose, order such excess or any part thereof transferred to the general fund of such city or town, or

(2) use such excess or any part thereof for the purchase of property at sales for delinquent taxes or assessments, or both, or which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town.

The council may sell any tax certificates issued on any such sale or sales. After acquiring title to such property, the city or town may lease such property, or sell the same at public or private sale and make conveyance thereof, or otherwise dispose thereof as the interest of the city or town may require. All proceeds from such sales of tax certificates, and from such leasing, sale, or other disposition of the property, shall belong to and be paid into the revolving fund, and be subject to transfer in whole or in part to the general fund by the vote of all the members of the council at a meeting called for that purpose, as hereinbefore provided.

History: En. Sec. 5, Ch. 24, L. 1929.

Collateral References

References

Hansen v. City of Havre, 112 M 207, 211, 114 P 2d 1053.

Municipal Corporations 580, 887.

63 C.J.S. Municipal Corporations § 1644;

64 C.J.S. Municipal Corporations § 1881.

11-2274. Supplemental revolving fund from parking meter revenue. A city or town may create, establish, and maintain a supplemental revolving fund out of the net revenues of parking meters to secure prompt payment of principal of and interest on special improvement district bonds issued under the provisions of this act for improvements undertaken pursuant to sections 11-2201 to 11-2273 for the following purposes: paving, repaving, macadamizing, remacadamizing, surfacing, resurfacing, oiling, reoiling, graveling, regraveling, piling, repiling, capping, recapping, grading or regrading one or more streets, alleys, avenues or other public places or ways in said city or town and/or constructing therein curbs or gutters or for the opening or widening of any street, avenue, alley or other public way, provided that the provisions of this act shall not be applicable to any improvement unless the council shall find that eighty (80%) per cent or more in area of the total parcels to be assessed for such improvement have been improved by the erection of permanent buildings or

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structures thereon having a value greater than the value of such parcels without such improvements according to the last assessment roll.

History: En. Sec. 1, Ch. 260, L. 1917.

11-2275. Creation and maintenance of fund. A supplemental revolving fund may be created by ordinance subject to the approval of a majority of the qualified electors voting upon the question at a general or special election. As used in this act "qualified electors" shall mean registered electors of the municipality. The supplemental revolving fund shall be created and maintained solely from the net revenues of parking meters and the ordinance may pledge to said fund all or any part of the said net revenues of parking meters which may be then owned or leased or rented or thereafter acquired by the city or town. Said ordinance shall contain such provisions in respect to the purchase, control, operation, repair and maintenance of parking meters, including rates to be charged, and the application of the net revenues therefrom and the management and use of the supplemental revolving fund as the council shall deem necessary.

History: En. Sec. 2, Ch. 260, L. 1947; am'd. Sec. 8, Ch. 158, L. 1971.

Amendments

The 1971 amendment substituted "registered electors of the municipality" at

the end of the second sentence for "registered electors whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality."

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11-2276. Issuance of bonds—submission to electors. At any time after the award of the contract for any of the improvements described in section 11-2274 and prior to the issuance of bonds or warrants therefor under the provisions of section 11-2231 the council may by resolution determine that such improvement is of a character that bonds may be issued hereunder in lieu of bonds under said section 11-2231, and may submit to the qualified electors of the city or town the question whether such bonds shall be issued. The proposal to issue bonds may be submitted at the same election as the proposal to create the supplemental revolving fund and must be approved by a majority of the qualified electors voting on the question.

History: En. Sec. 3, Ch. 260, L. 1947.

11-2277. Determination of provisions of bonds—maturity—interest—form. Whenever the council has been authorized to issue bonds hereunder, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund. Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, cost of the parking meters, and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued. The bonds may mature at one time, not ex-

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ceeding the maximum maturity of the assessments to be levied for said improvement or may mature in installments at various times during the term of said assessments, but in no event shall such bonds mature beyond ten (10) years from date thereof. Said bonds, as the council shall determine, shall be subject to redemption prior to maturity if so determined by the council, and may be payable at any suitable bank or trust company either within or without the state of Montana. The resolution providing for the issuance of bonds may also contain such reasonable covenants for the protection of the holders thereof as the council may determine. The bonds issued hereunder shall be in substantially the form provided in section 11-2231 as modified by the provisions hereof.

History: En. Sec. 4, Ch. 260, L. 1947; am'd. Sec. 19, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "shall bear

interest payable annually or semi-annually, not exceeding four and one-half (4 1/2) per cent per annum" after "Said bonds" at the beginning of the fifth sentence.

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11-2278. Operation and use of fund. Moneys in the supplemental revolving fund shall first be loaned to the various district funds whose bonds are guaranteed hereunder to make up any deficiency in such fund. In event of any further deficiency in such funds, the moneys in the revolving fund created under sections 11-2269 to 11-2273 may be loaned to make good such deficiency pursuant to the provisions of said sections. In event that the deficit exceeds the moneys in the supplemental revolving fund then the moneys in the revolving fund may be similarly loaned until the deficiency has been made good. A deficiency shall exist in any district fund whenever principal and interest is due and there are no moneys in the fund to pay the same and the authorizing resolution may provide that bonds shall become due in accordance with a plan of redemption prior to the stated maturity date. Both revolving funds shall thereafter have concurrent liens on the unpaid assessments and the moneys in the improvement district fund for all such advances, provided that such advances shall not be returned so long as any principal or interest on bonds issued hereunder remains unpaid.

History: En. Sec. 5, Ch. 260, L. 1947.

11-2279. Obligation of city or town—enforcement of bondholder's rights. All agreements, conditions, covenants or restrictions in the ordinance creating the supplemental revolving fund, the resolution determining that the improvement is of a character for which bonds may be issued under this act and in the resolution authorizing the issuance of bonds shall be binding upon the city or town and may not be thereafter altered or amended to the detriment of the rights of any bond holder so long as any of such bonds are outstanding. The provisions of this act and the rights granted under any such ordinance or resolution may be enforced by any bond holder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

History: En. Sec. 6, Ch. 260, L. 1947.

11-2280. Court determination of validity of proceedings. Within ten (10) days after the adoption of the resolution providing for the issuance of bonds hereunder, the council may file a petition in the district court of the judicial district wherein said city or town is located to determine the validity of the proceedings theretofore had relative to the issuance of said bonds, the creation of the supplemental revolving fund, and the levy of a

special assessment. Such action shall be in the nature of a proceeding in rem and jurisdiction of all parties interested shall be had by notice given as hereinafter provided. The petition shall set forth generally the facts in reference to the improvement, the creation of the supplemental revolving fund and the issuance of bonds, and shall have as exhibits thereto certified copies of the ordinances and resolutions and shall pray for confirmation of the proceedings and of the bond issue and the special assessments, if theretofore levied. Upon the filing of said petition, the district court or any judge thereof shall fix the time for hearing on said petition, which shall not be less than fifteen (15) days from the date of filing the petition in said court and shall order the clerk of the court to give notice of the filing of said petition and the date of hearing thereon by publication at least once a week for two (2) calendar weeks in a newspaper published or of general circulation in the county where the city or town is situated, and also by posting a written or printed copy thereof in at least three (3) public places in each voting precinct of said city or town, the date of first publication and posting to be not less than fifteen (15) days prior to the date fixed for hearing. The notice shall state the substance of the petition and the time and place for hearing and that any person interested or whose rights may be affected by the issuance or sale of said bonds or the levy of said special assessment may on or before the day fixed for hearing of said petition demur to or answer said petition and may appear at said hearing and contest the granting of the prayer of said petition and the entry of any order of confirmation pursuant thereto. Any person so notified to appear may enter his appearance in such proceedings and demur to or answer the petition and contest the granting of the prayer of said petition and all provisions of the code of civil procedure shall be applicable to said proceedings. If upon the hearing the court shall find and determine that the requirements of this act have been complied with and notice of the hearing duly given as required by law, it shall have power to examine and determine the regularity, legality and validity of the proceedings relative to the issuance of the bonds and the levy of special assessments and the legality and validity of the bonds and the special assessment and may ratify, approve, and confirm the said proceedings in whole or in part and enter its judgment or decree accordingly. From any such judgment or decree an appeal may be taken to the supreme court at any time within ten (10) days from the entry of such judgment in the manner prescribed by the Code of Civil Procedure governing appeals from the district court to the supreme court. If no such appeal be taken within the time aforesaid, or if the judgment or decree of the district court be affirmed upon such appeal, such judgment or decree shall be forever conclusive upon all the world as to the validity of the bonds and the special assessment and the same shall never be called into question in any court of the state. The cost of said proceedings shall be allotted or apportioned between the parties in the discretion of the court.

History: En. Sec. 7, Ch. 260, L. 1947.

11-2281. Separability clause. If any provisions of this act or the application of such provision to any person, body or circumstance shall be held invalid, the remainder of this act or the application of such pro-

visions to persons, bodies or circumstances other than those to which it is held invalid shall not be affected thereby.

History: En. Sec. 8, Ch. 260, L. 1947.

11-2282. Cancellation of extinguished liability accounts. The city council of any city and the town council of any town in the state of Montana is hereby authorized to cancel of record all or any special improvement district liability accounts incurred or issued prior to February 25, 1929, the liability of which has been extinguished by reason of issuance of a tax deed, or by the application of the statute of limitations or other laws of the state of Montana.

History: En. Sec. 1, Ch. 65, L. 1949;
amd. Sec. 1; Ch. 2, L. 1951.

Collateral References

Municipal Corporations 375.

63 C.J.S. Municipal Corporations § 1203.

11-2283, 11-2284. Repealed—Chapter 57, Laws of 1953.

Repeal

These sections (Secs. 1, 3, Ch. 44, L. 1951), relating to the recording by city, town, or county clerks of notice of pro-

ceedings for the installation of special improvements, were repealed by Sec. 1, Ch. 57, Laws 1953.

11-2285. Street parking improvement districts — abandonment. Whenever it is deemed to the best interest of a city or town or the inhabitants thereof by the mayor and council of such city or town the mayor and council of any city or town in the state of Montana, be, and they are authorized to abandon the maintenance of any street parking improvement district established in such city or town by the passage of a resolution of intention to abandon the same. After the passage of such resolution the city or town clerk shall give notice of such intention to abandon by one publication in a newspaper published in such city or town at least ten (10) days prior to the passage of a resolution abandoning the same. In case there is no publication of a newspaper in such city or town then notice shall be given by the posting of a notice of such intention to abandon in three (3) places within such district to be abandoned. Said notice shall specify the boundaries of such district to be abandoned, the date of the passage of the resolution of intention to abandon, and the date set for the passage of the resolution of abandonment, and that unless forty per cent (40%) of the owners in the district file written protest with the clerk of such city or town before the passage of the resolution same will be passed. Said notice shall also set forth, when applicable, that it shall be the duty of the owners of the property abutting on the street parking district involved to maintain the same after such abandonment. Unless forty per cent (40%) of the property owners owning property abutting such district file written protests against such abandonment upon the date set for the passage of such resolution of abandonment said council shall forthwith pass a resolution declaring such district abandoned. It shall then be the duty of all property owners owning property abutting said district to maintain such portion thereof abutting their property. Such abandonment however shall not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against said district prior to the date of abandonment.

History: En. Sec. 1, Ch. 38, L. 1951.

Collateral References

Municipal Corporations—§61.

64 C.J.S. Municipal Corporations § 1845.

11-2286. City and town council—powers and duties—repair and maintenance—resolutions. In all cities or towns the city or town council shall have power, and it is hereby made the duty of each city or town council, where it is necessary or advisable in connection with any special improvement district, to provide in addition to the construction of the proposed improvements for repairs to existing facilities, or for maintenance of improvements or repairs, or for both such repairs and maintenance, to include in the resolution or ordinance creating such special improvement districts or providing for assessments to defray the cost of improvements, repairs, and maintenance, a statement showing the allocation of the total amounts, either in dollars and cents or in percentages of said total amounts, to be assessed or assessed to said different purposes, to wit: To improvements, to repairs if any, and to maintenance if any.

History: En. Sec. 1, Ch. 39, L. 1953.

Collateral References

Municipal Corporations—§87.

64 C.J.S. Municipal Corporations § 1884.

11-2287. Designation of district. In all cases set out in the preceding section the city or town council shall designate the special district formed as a special improvement and repair district, or a special improvement and maintenance district, or a special improvement, repair and maintenance district, as the case may be.

History: En. Sec. 2, Ch. 39, L. 1953.

Collateral References

Municipal Corporations—§87.

64 C.J.S. Municipal Corporations § 1884.

11-2288. Investment of interest and sinking fund moneys. The governing body of a county or city in which a special improvement district is located, may invest interest and sinking fund moneys of the district in time deposits of a bank insured by the federal deposit insurance corporation, or in direct obligations of the United States government payable within one hundred eighty (180) days from the time of investment. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn.

History En. Sec. 1, Ch. 45, L. 1965.

CHAPTER 16

RURAL IMPROVEMENT DISTRICTS

- Section 16-1601(1). Rural improvement districts—creation and objects.
 16-1601(2). Rural improvement districts—creation and objects.
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 16-1637. Excess moneys in revolving fund—transfer to general fund.
 16-1638. Cancellation of record of extinguished liability accounts.

16-1601. (4574) Rural improvement districts—creation and objects.
 Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

1973 SUPPLEMEN

The owner or owners of open ditches carrying irrigation or other water, shall not be included in any rural improvement districts under this act for the purpose of assessment to support the rural improvement districts for the installation, repair, or maintenance of any protective devices. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec.

1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969.

Compiler's Notes

The 1969 amendment reconciled the two amendments of section 16-1601 by 1961

16-1601(2). (4574) Rural improvement districts—creation and objects. Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase, and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

History: En. Sec. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 134, L. 1961.

Compiler's Note

This section was amended twice in 1961, once by Ch. 30, approved February 15, and once by Ch. 134, approved March 2. Neither chapter mentioned nor contained the changes made by the other, and

neither contained an effective date clause. The amendments do not appear to conflict and, if they are not in conflict, both would be effective, except that there may be no authority for acquisition by purchase of devices intended to protect the safety of the public from open ditches carrying irrigation or other water. The section, as amended by Ch. 134, Laws 1961, is set out above; the section, as amended by Ch. 30, Laws 1961, is set out as section 16-1601(1), above.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 30, L. 1961.

Compiler's Note

This section was amended twice in 1961, once by Ch. 30, approved February 15, and once by Ch. 134, approved March 2. Neither chapter mentioned nor contained the changes made by the other, and neither contained an effective date clause. The amendments do not appear to conflict and, if they are not in conflict, both would be effective, except that there may be no authority for acquisition by pur-

chase of devices intended to protect the safety of the public from open ditches carrying irrigation or other water. The section, as amended by Ch. 30, Laws 1961, is set out above; the section, as amended by Ch. 134, Laws 1961, is set out as section 16-1601(2), below.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806.

Collateral References

Counties \hookrightarrow 22.

20 C.J.S. Counties § 50.

48 Am. Jur. 663, Special or Local Assessments, § 114 et seq.

DECISIONS UNDER FORMER LAW

County Liable if District Warrants Paid out of Order of Registration, Same as City

Where defendant county created rural improvement district under Ch. 123, Laws of 1915, it assumed the same duties as a city regarding payment of registered warrants of the district in their order and where county treasurer paid district war-

rants which had been registered subject to those of plaintiff who did not discover the facts until the fund on which her warrants were drawn had been exhausted, the county was generally liable. *Witter v. Phillips County*, 111 M 352, 356, 109 P 2d 56.

ants. Therefore, this section takes the place of both sections 16-1601(1) and 16-1601(2) as set forth in the parent volume.

Amendments

The 1969 amendment reconciled the two 1961 amendments and added the second paragraph.

16-1602. (4575) Resolution of intention—publication, mailing and notice. Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning real property within the proposed district, listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known place of residence upon the same day such notice is first published or posted.

1973 SUPPLEMEN

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, or acquired by purchase, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969.

Amendments.

The 1969 amendment inserted "real" before "property" after "firm or corpora-

tion owning" and "listed in his name . . . school district taxes" after "proposed district" in the second sentence of the first paragraph.

Effective Date

Section 2 of Ch. 252, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 6, 1969.

16-1602.1, 16-1602.2 Repealed—Chapter 57, Laws of 1953.

Repeal

These sections (Secs. 2, 3, Ch. 44, L. 1951), relating to the recording by city, town, or county clerks of notice of pro-

ceedings for the installation of special improvements, were repealed by Sec. 1, Ch. 57, Laws 1953.

16-1603. (4576) Extension of district by county commissioners, when. Whenever a contemplated work, or improvement, in the opinion of the board of county commissioners, is of more than local or ordinary public benefit, or whenever according to the estimates furnished by the county

surveyor or an engineer approved by the board of county commissioners and designated in the petition, the total estimated cost and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed, if assessed upon the lots and lands fronting upon such proposed work or improvement according to the valuation fixed by the last assessment roll, whereon it was assessed for taxes, the board of county commissioners may make the expense of such work chargeable upon the extended district, and which may include other lots and lands not fronting on the improvement, and which the said board of county commissioners shall in its resolution of intention declare to be the district benefited by said work or improvements, and to be assessed to pay the cost and expense thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 3, Ch. 147, L. 1921; re-en. Sec. 4576, R. C. M. 1921.

References

Swords v. Simineo, 68 M 164, 216 P 806.

Collateral References

Counties—192.

20 C.J.S. Counties §§ 231, 233.

16-1604. (4577) Protests against creation or extension of district—
hearing. At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. At the next regular meeting of the board of county commissioners, after the expiration of the time within which said protest may be so made, the board of county commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work and the cost thereof is to be assessed upon the property fronting thereon, and the board of county commissioners finds that such protest is made by the owners of more than fifty per cent of the area fronting on the proposed work, or when the protest is against the proposed work and the cost thereof is to be assessed upon the property within the extended district, and the board of county commissioners finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for such improvements, no further proceedings shall be taken for a period of six months from the date when said protest was received by the said county clerk, except in case the improvements are the construction of sanitary sewers, when the said protests may be overruled by a unanimous vote of the board of county commissioners. In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the county shall be considered the same as other property in the district. The board of county commissioners may adjourn said hearing from time to time.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R. C. M. 1921.

Installation of Water Mains

Where city agrees to provide water for a special improvement district the city does not have the duty or the obligation to install at its own expense the water

mains necessary. Crawford v. City of Billings, 130 M 153, 297 P 2d 292, 295.

P 806; Billings Bench Water Assn. v. Yellowstone County, 70 M 401, 225 P 996.

References

Swords v. Simineo, 68 M 164, 170, 216

Collateral References

Counties \supset 196 (1), (2).
20 C.J.S. Counties § 286.

16-1605. (4578) Jurisdiction attaches, when—resolution creating district. When no protests have been delivered to the county clerk within fifteen days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said board of county commissioners to be insufficient, or shall have been overruled, or when a protest against the extending of the proposed district shall have been heard and denied, immediately thereupon the board of county commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the board of county commissioners shall pass a resolution creating the said special improvement district in accordance with the resolution of intention theretofore introduced and passed by the board of county commissioners.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 5, Ch. 147, L. 1921; re-en. Sec. 4578, R. C. M. 1921.

P 806; Billings Bench Water Assn. v. Yellowstone County, 70 M 401, 225 P 996.

Collateral References

Counties \supset 54.
20 C.J.S. Counties § 94.

References

Swords v. Simineo, 68 M 164, 170, 216

16-1605.1. Areas includable in district. A rural improvement district, as authorized by sections 16-1601(1) and 16-1601(2), may include a part or all of any county or may include areas in more than one (1) county.

History: En. Sec. 1, Ch. 62, L. 1963.

16-1605.2. Trustees to administer district including areas in more than one county. If a rural improvement district includes areas in more than one (1) county, the board of county commissioners of each county in which any portion of the district is situated shall, upon the creation of such district, and at a joint session, appoint a board of three (3) trustees to administer the affairs of the district.

History: En. Sec. 2, Ch. 62, L. 1963.

16-1605.3. Terms of office of trustees—filling vacancies. The trustees so appointed upon the creation of such district shall serve staggered terms of one (1), two (2), and three (3) years. At least one (1) trustee shall be appointed from each county within the district. The trustees so appointed shall hold office for the term of their respective appointment or until their successor is appointed and qualified. At the end of the respective terms of said trustees, the then board of county commissioners shall appoint a new trustee for a three (3) year term, and in case of a vacancy by death, resignation, removal from the district or otherwise a trustee shall be appointed by the board of county commissioners to fill such vacancy.

History: En. Sec. 3, Ch. 62, L. 1963.

16-1605.4. Powers of board of trustees. The board of trustees of a rural improvement district shall have all the powers and duties with re-

spect to such district as the board of county commissioners has with respect to a district including the area of only one (1) county.

History: En. Sec. 4, Ch. 62, L. 1963.

16-1606. (4579) Sufficiency of subsequent resolutions, etc. In all resolutions, notices, orders and determinations subsequent to the resolution of intention and notice of improvements it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for further particulars.

History: En. Ch. 123, L. 1915; superseded by Sec. 6, Ch. 147, L. 1919; amended by Ch. 156, L. 1917; amended by Ch. 67, L. 1921; superseded by Sec. 6, Ch. 147, L. 1921; re-en. Sec. 4579, R. C. M. 1921.

16-1607. (4580) Notice inviting proposals—publication and posting—opening bids—readvertisement—contract for purchase. (1) A notice inviting proposals and referring to specifications on file with the engineer selected as hereinbefore provided shall be published at least twice in a daily, semiweekly or weekly newspaper published and circulated nearest to the boundaries of the said proposed improvement district, and which paper shall be designated by the board of county commissioners for that purpose, and a copy of said notice shall be posted in at least three public places within the boundaries of the proposed district.

(2) The board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements proposed, reserving the right to select the kind of type or materials to be used in making any or all of said improvements after the bids or proposals therefor shall have been opened, examined and declared.

(3) The time fixed for the opening of the bids shall not be less than fifteen days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the board of county commissioners, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of said proposal. Such proposals or bids shall be delivered to the county clerk, and the board of county commissioners shall, in open session, publicly open and examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check.

(4) The board of county commissioners may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the board of county commissioners, and shall reject all proposals, other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for such work or improvement, to the lowest responsible bidder at the prices named in his bid.

(5) If the bids are rejected or no bids are received the board of county commissioners may within six months thereafter readvertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the checks accompanying the bids so rejected, but the check accompanying said accepted proposal or bid shall be held by the county clerk until the contract for doing said work as hereinafter provided has been entered into,

either by the said lowest bidder, or by the owners of over fifty per cent of frontage, whereupon said certified check shall be returned to said bidder, but if said bidder fails, neglects or refuses to enter into the contract to perform said work and improvements as hereinafter provided, then the certified check accompanying his bid, in the amount herein mentioned, shall be declared to be forfeited to the said board of county commissioners, and shall be collected by it, and paid into the general fund of the county.

(6) If the proposed improvement consists of the purchase of an existing improvement, the board of county commissioners may, in their discretion, after the creation of the said special improvement district, and after ordering the proposed improvement, enter into a contract for the purchase of said improvement, upon such terms as they deem just, without advertising for bids, or proposals, provided, however, that the total purchase price shall not exceed the amount set forth in the notice required by section 16-1602.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R. C. M. 1921; amd. Sec. 3, Ch. 134, L. 1961.

Collateral References

Counties \Rightarrow 115-118, 120.
20 C.J.S. Counties §§ 183-186, 189.
43 Am. Jur. 750, Public Works and Contracts, § 10 et seq.

16-1608. (4581) Reletting or completion of contract on delinquency of contractor. If the contractor who may have taken any contract does not complete same within the time limited in the contract, or within such further time as may be given him, the engineer selected as hereinbefore provided shall report such delinquency to the board of county commissioners, which may relet the unfinished portion of said work, after pursuing the formalities prescribed herein for the letting of the whole in the first instance, or the board of county commissioners shall have the right, in its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bonds or warrants, due such contractor, and in the event there is no money, bonds or warrants due such contractor from which to deduct such cost, then and in such event the board of county commissioners shall have the right to sue such contractor and recover from him such costs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 8, Ch. 147, L. 1921; re-en. Sec. 4581, R. C. M. 1921.

Collateral References

Counties \Rightarrow 130.
20 C.J.S. Counties § 203.

16-1609. (4582) Bond of contractor or contracting owners. All contractors and contracting owners included shall at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, with two or more sureties, payable to said county in a sum not less than twenty-five per cent of the amount of the contract, conditioned for the faithful performance of the contracts, indemnifying the county from any detriment, damage or loss growing out of said work, and the sureties shall justify before any person competent to administer an oath in double the amount mentioned in said bond, over and above all statutory exemptions; provided, however, that nothing herein contained shall be considered as to prevent or prohibit the board of county com-

missioners from requiring or accepting in any case a bond furnished by a surety company authorized to transact business in the state of Montana.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 9, Ch. 147, L. 1921; re-en. Sec. 4582, R. C. M. 1921.

Collateral References
Counties—123.
29 C.J.S. Counties § 201.

16-1610. (4583) Notice of defects or irregularities—objections. At any time within sixty days from the date of the awarding of a contract, any owner or other person having any interest in any lot, tract or plot of land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous or faulty, or that his property will be damaged by the making of any of the improvements in the manner contemplated, may file with the county clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. Said notice shall state that it is made in pursuance of this section. All objections in any act or proceeding or in relation to the making of said improvements must be made in writing and in the manner and at the time aforesaid, and all claims for damages therefor shall be waived by such property owner, in case no written objection is filed by him; provided, that notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this act.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 10, Ch. 147, L. 1921; re-en. Sec. 4583, R. C. M. 1921.

Collateral References
Counties—209, 210, 212.
20 C.J.S. Counties § 322.

16-1611. (4584) Assessment of property—apportionment of costs—railroads. (1) To defray the cost of making any of the improvements provided for in this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of such improvements against the entire district and each lot or parcel of land assessed in such district to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; or where said rural improvement district is located more than five (5) miles from the boundary of an incorporated city or town, said assessment may, at the option of the board of county commissioners, be based upon the assessed value of the lots or pieces of land within said district; provided, however, that the board of county commissioners in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for, between the corner lots and inside lots of any block, the board of county commissioners may in the resolution creating any improvement district provide that whenever any of the improvements herein provided for shall be along any side street or abutting upon the side of any corner lot or block, that the amount of the assessment

tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Each resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent. The payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed thirty (30) years, payment to be made in equal annual installments. If federal loans are available, payments may be spread over a term of not to exceed forty (40) years.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965.

References

Swords v. Simineo, 68 M 164, 170, 216 P 806; Billings Bench Water Assn. v. Yellowstone County, 70 M 401, 225 P 996.

Collateral References

Counties \Rightarrow 192-194.
20 C.J.S. Counties §§ 281, 284, 285.

16-1614. (4587) Notice of resolution—contents—objections. Such resolution, signed by the chairman of the board of county commissioners, shall be kept on file in the office of the county clerk, and a notice signed by the county clerk, stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk, subject to inspection, shall be published at least one publication in a newspaper published nearest to where the special improvement is to be made. Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed, the board of county commissioners shall meet and hear all such objections, and for that purpose may adjourn from day to day and may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer two days after its passage.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R. C. M. 1921.

Collateral References

Counties \Rightarrow 54.
20 C.J.S. Counties § 92.

16-1615. (4588) Damages to be added to cost, when —additional assessments. Whenever the owner or anyone interested in any property, situate in the special improvement district, after having filed with the county clerk a written notice, claiming that his property had been damaged, shall be awarded or recover any amount on account of damages sustained to said property by the reason of the construction of any improvement in said special improvement district, before the resolution levying the assessment to defray the cost of making such improvements in said district has been passed and adopted by the board of county commissioners, the amount so ordered as recovered shall be added to and constitute a part of making such improvements, but if the resolution levying the assessment to defray the cost and expenses of making said improvements has been passed and adopted by the board of county commissioners, it shall pass and adopt a

supplemental resolution levying an additional assessment against the property in said district for the purpose of paying the amount so awarded of covering the said supplemental resolution, and shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making such improvements.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 15, Ch. 147, L. 1921; re-en. Sec. 4588, R. C. M. 1921.

806; Billings Bench Water Assn. v. Yellowstone County, 70 M 401, 225 P 996.

Collateral References

Counties  192.

20 C.J.S. Counties §§ 281, 284.

References

Swords v. Simineo, 68 M 164, 170, 216 P

16-1616. (4589) Incidental expenses as costs of improvement—duty of county clerk. The cost and expense connected with and incidental to the formation of any special improvement district, including the cost of preparation of plans, specifications, maps, plats, engineering, superintendence and inspection, and preparation of assessment-rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement districts, and it shall be the duty of the engineer selected as hereinbefore provided to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the county clerk, whose duty it shall be to prepare all necessary schedules and resolution levying the taxes and assessments in such special improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R. C. M. 1921.

16-1617. (4590) Special assessments, etc., a lien on property. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, and from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 17, Ch. 147, L. 1921; re-en. Sec. 4590, R. C. M. 1921.

Collateral References

48 Am. Jur. 724, Special or Local Assessments, § 194 et seq.

16-1618. (4591) Effect of misnomer or mistake. When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake, relating to the ownership thereof, shall affect such assessment or render it void or voidable.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 18, Ch. 147, L. 1921; re-en. Sec. 4591, R. C. M. 1921.

16-1619. (4592) Maintenance of improvements—resolution—change in maintenance districts. (1) Whenever any sanitary or storm sewers, lights or light systems, waterworks plants, water systems, or sidewalks, or any

other special improvements petitioned for, or created by the state or federal government, have been made, built, constructed, erected or accomplished as in this act provided, it is hereby made the duty of the board of county commissioners, under whose jurisdiction the district was created or supervised or directed, adequately and suitably to maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise, in such way or manner as the board shall deem suitable and proper. The whole cost of maintaining, preserving and repairing of said improvements in any improvement district shall be paid by assessing the entire district in the method provided for by section 16-1603 of this code.

(2) It shall be the duty of the board to estimate as near as practicable the cost of maintaining, preserving or repairing the improvements in each district for each year beginning January first or such other time as it may appear necessary; and before the first Monday in September of each year the board shall pass and finally adopt a resolution levying and assessing all the property within the district within an amount equal to the whole cost of maintaining, preserving or repairing said improvements within the district, and the same shall be proportioned as provided in section 16-1603, supra. Said resolution levying assessments to defray the cost of maintenance, preservation or repairs of such improvements shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing and installing the improvements in said special improvement districts, and the money collected therefor shall be paid into a fund known as Special Improvement District No.....Maintenance Fund, the number of which shall correspond with the number of special improvement district in which the improvements so maintained are situated; and such fund shall be used to defray the expense of maintenance, preservation or repair of said improvements, and for no other purpose. Any special assessment levied and made for any of the purposes in this section mentioned, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

The board shall have the power not more than once a year of changing, by resolution, the boundaries of any maintenance district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R. C. M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935.

References

Swords v. Siminco, 68 M 164, 170, 216 P 806; Billings Bench Water Assn. v. Yellowstone County, 70 M 401, 225 P 996.

16-1620. (4593) Form and terms of district warrants and bonds—payment of contracts. (1) All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

1975 SUPPLEMENT

16-1620

COUNTIES

District No. _____
United States of America
State of Montana
Dollars
\$ _____

Warrant or
(Bond No. _____)

Interest at the rate of _____ percent per annum, payable annually.

Special Improvement District Coupon

Warrant or Bonds

_____, Montana.
. Issued by the County of _____, Montana.

The county treasurer of _____ County, Montana, will pay to _____, or bearer, the sum of _____ dollars, as authorized by Resolution No. _____, as passed on the _____ day of _____, 19____, creating or maintaining the Special Improvement District No. _____, for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of _____ County, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of _____, Montana, relating to the issuance thereof.

Dated at _____, Montana, this _____ day of _____, 19____,
County of _____, Montana.

(SEAL)

By _____, chairman of the board of county commissioners.

(SEAL)

_____ County Clerk

Registered at the office of the county treasurer of _____, County, Montana this _____ day of _____, 19____.

_____ County Treasurer

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signatures of the chairman of the board of county commissioners and the county clerk, provided however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars (\$100) or fractions, or multiples thereof; and may be issued in installments, and may extend over a period of not to exceed thirty (30) years, except that if federal loans are available for improvements, repayment may extend over a period not to exceed forty (40) years.

(3) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

(4) The board of county commissioners shall provide for making payments for maintenance or improvements in any rural improvement district by the following method:

The board of county commissioners shall sell bonds or warrants issued under the provisions hereof, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash, for not less than the face value of such bonds, or warrants, and including interest thereon, and shall use the proceeds of such sale in making payment to the contractor, or contractors, and such payment may be made either, from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board of county commissioners. The provisions of sections 11-2313, 11-2314 and 11-2315, which relate to the notice of sale, publication of notice and manner and method of selling bonds by cities and towns, in so far as the same are applicable thereto and not in conflict with the provisions of this section, shall apply to, govern and control the form of notice of sale, publication of notice and manner and method of selling such bonds or warrants.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7,

Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965.

Cross-Reference

Investment of interest and sinking fund moneys, sec. 11-2388.

16-1621. (4594) Repealed—Chapter 136, Laws of 1961.

Repeal

This section (Sec. 21, Ch. 147, L. 1921), relating to contracts payable in warrants,

was repealed by Sec. 1, Ch. 136, Laws 1961.

16-1622. (4595) County treasurer to collect assessments. It shall be the duty of the county treasurer, in accordance with the provisions of the Revised Codes of Montana, where any resolution of assessment, either for construction or maintenance, has been duly certified by the county clerk, to collect such assessment in the same manner and at the same time as taxes for general and municipal purposes are collected by him.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 22, Ch. 147, L. 1921; re-en. Sec. 4595, R. C. M. 1921.

Collateral References

Counties—194.
20 C.J.S. Counties § 285.

16-1623. (4596) Correction of erroneous or invalid assessment. Whenever, by reason of any alleged nonconformity to any law, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the board of county commissioners may make all necessary orders and may take all necessary steps to correct the same, and to reassess and levy the same, including the ordering of work, with the same force and effect as it made at the time provided by law, or resolution relating thereto; and may reassess and levy the same with the same force and effect as an original levy; whenever any apportionment or assessment is made, and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon reassessment or levy

shall, so far as it is practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provision of any law specifying a time when, or order in which acts shall be done in a proceeding which may result in a special tax shall be taken to be subject to the qualifications of this act. Any and every rule and regulation of any board of county commissioners passed in substantial conformity with this section is hereby legalized.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 23, Ch. 147, L. 1919; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1921; re-en. Sec. 4596, R. C. M. 1921.

16-1624. (4597) Payment of tax under protest—action to recover. When any tax levied and assessed under any of the provisions of this act is deemed unlawful by the party whose property is thus taxed, or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the county treasurer, and thereupon such party so paying, or his legal representative, may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid, or against the county in whose behalf the same was collected, to recover such tax or any portion thereof so paid under protest; provided, however, that any action instituted to recover such tax paid under protest must be commenced within sixty days after the date of payment thereof. The tax so paid under protest shall be held by the county treasurer until the determination of any action brought for the recovery thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 21, Ch. 147, L. 1921; re-en. Sec. 4597, R. C. M. 1921.

Collateral References

Counties ~~196~~ 196 (1).

20 C.J.S. Counties §§ 286-288.

48 Am. Jur. 764, Special or Local Assessments, § 261 et seq.

16-1625. (4598) Mistake not to vitiate liens. Any mistake in the description of property or the name of the owner shall not vitiate any liens created by this act, unless it is impossible to identify the property from the description.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 25, Ch. 147, L. 1919; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1921; re-en. Sec. 4598, R. C. M. 1921.

16-1626. (4599) Definition of terms. 1. The person owning the fee, or the person to whom, on the day the action is commenced, appears the legal title to the lot and lands, by deed duly recorded in the county recorder's office in each county, or the person in possession of lands, lots or portions of lots, or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator or guardian of the owner, shall be regarded, treated and deemed to be the "owner" for the purpose of this act, according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed the possession of such owner.

2. The words "work," "improved" and "improvements," as used in this act, shall include all work or the securing of property, by purchase or otherwise, mentioned in this act, and also the construction, reconstruction, maintenance and repairs, of all or any portion of said work.

3. The term "incidental expenses," as used in this act, shall include the compensation of the engineer selected as hereinbefore provided for work done by him; also the cost of printing and advertising, as provided in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses in this subdivision shall be presented to the county clerk by itemized bill, duly verified by oath of the demandant.

4. The notices, resolutions, orders or other matter required to be published by the provisions of this act, shall be published in a daily newspaper or a semiweekly newspaper, or weekly newspaper, to be designated by the board of county commissioners, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to publications herein provided for; provided, however, that in case there is no daily, semiweekly or weekly newspaper printed or circulated in any such county, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semiweekly or weekly newspaper, in three of the most public places in each voting precinct, except herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer or clerk of the newspaper, or of the poster of the notice. No publication of notice other than that provided for in this act shall be necessary to give validity to any of the proceedings provided therein. The word "twice," as used in this act, referring to the number of times, notices, resolutions or other matter shall be published, shall be held to mean, publication of the same in two entire issues of the newspaper, one being on one day and the other issue being on a subsequent day of the same or subsequent week.

5. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

6. The word "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadam, or of bituminous rock or asphalt, or of wood, brick or other material, whether patented or not, which the board of county commissioners by rule or resolution shall adopt.

7. The word "street," as used in this act, shall be deemed and is hereby declared to include avenues, highways, lanes, alleys, crossings or intersections, courts and places, which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

8. The term "engineer," designated in the petition as used in this act, shall be understood and so construed as to mean the person, firm or

corporation whose name is designated and approved by the board of county commissioners as the engineer in the original petition asking for the improvement and may be the county surveyor.

9. The term "board of county commissioners" is hereby declared to include any body or board which under the law is the legislative department of the government of the county.

10. The terms "clerk," "county clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said board of county commissioners.

11. The term "quarter block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street halfway from such intersection to the next main street, or when no main street intervenes all the way to the boundary line of any city.

12. The term "county treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the county.

13. The term "street intersection," wherever used in this act, shall be held to mean that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R. C. M. 1921; amd. Sec. 4, Ch. 134, L. 1961.

References

Studer Constr. Co. v. Rural Special Improvement District No. 203, — M —, 418 P 2d 865, 867; Swords v. Nutt, 11 P 2d 936.

16-1627. (4600) Jurisdiction of board preserved on adjournment—notice of hearing. Whenever in proceedings hereunder, a time and place for hearing by the board of county commissioners is fixed, and, from any cause the hearing is not then and there held or regularly adjourned to a time and place fixed, the power and jurisdiction of the board of county commissioners in the premises shall not be thereby divested or lost, but the board of county commissioners may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the board of county commissioners shall have power to act as in the first instance.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 27, Ch. 147, L. 1921; re-en. Sec. 4600, R. C. M. 1921.

16-1628. (4601) County clerk to post notices—effect of error. Whenever any resolution, order, notice or determination is required to be published or posted, and the duty of posting or procuring the publication or posting the same is not specifically enjoined upon any officer in the county, it shall be the duty of the county clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of

any resolution, notice, order or determination hereinafter when the same is actually published or posted for the time herein required.

History: En. Ch. 123, L. 1915; super- 1919; superseded by Sec. 28, Ch. 147, L. seded by Ch. 156, L. 1917; amd. Ch. 67, L. 1921; re-en. Sec. 4601, R. C. M. 1921.

16-1629. (4601.1) Maintenance of lighting systems in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment. (1) When there has been, or shall be, created a rural improvement district, according to the provisions of sections 16-1601 through 16-1632, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, and no expense of construction is incurred by such rural improvement district in the installation of such lighting system, and it is necessary only to secure funds for the maintenance and operation of said system, and lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation, the board of county commissioners of such county may enter into a contract with other persons or corporation for the purpose of furnishing light to said rural improvement district.

(2) The cost of said service to said rural improvement district may be apportioned among the various tracts of land within said improvement district in proportion to the assessed value of said lands within said improvement district as determined by the said board of county commissioners, or at the option of said board, in proportion to the lineal front footage as determined by said board of each tract, any part of which is in the district, and abuts the street or roadway along which the lighting system is to be maintained, or in proportion to the area as determined by said board of that portion of each tract included in the district; and before the first Monday of September of each year, the board of county commissioners shall pass, and finally adopt a resolution levying and assessing all the property within the district, an amount equal to the whole cost of maintaining said lighting system, and the same shall be proportioned against the several tracts of land in said district as provided herein. Said resolution levying assessments to defray the cost of maintenance shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement districts, and the money collected therefor, shall be paid into a fund known as Special Improvement District No. Maintenance Fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated, and such funds shall be used to defray the expense of maintenance of said system, and for no other purpose. Any such assessment levied and made for any purpose in this section mentioned, together with all cost and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can be only extinguished by payment of such assessments, with all penalties, costs and interest.

History: En. Sec. 1, Ch. 58, L. 1933;
and Sec. 1, Ch. 217, L. 1959.

ence to sections 16-1601 through 16-1632
in subsection (1) of this section, was re-
pealed by Sec. 1, Ch. 136, Laws 1961.

Compiler's Note

Section 16-1621, included in the refer-

16-1630. (4601.2) Power to change boundaries—application of act. The board has the power not more than once a year of changing, by resolution, the boundaries of any maintenance district. Provisions of this act shall only apply to the method of securing funds for the maintenance of rural improvement districts for lighting systems.

History: En. Sec. 2, Ch. 58, L. 1933.

16-1631. (4602) Transfer of management and control of district to city or town. When a special improvement district has been created in accordance with the provisions of chapter 123, laws of the fourteenth legislative assembly, in any county of the state, and the property contained therein shall have become a part of or included within the boundaries of an incorporated city or town, such city or town is authorized and empowered to take over, operate, and control the same, and the board of county commissioners shall have the right and authority to transfer the operation, control and management thereof to such city or town, upon such terms and conditions as may be agreed upon.

Compiler's Notes

History: En. Sec. 1, Ch. 156, L. 1919; Chapter 123, laws of the fourteenth leg-
re-en. Sec. 4602, R. C. M. 1921. slative assembly (1915), referred to in

this section, was repealed by Ch. 147, L. 1921.

16-1632. (4603) Authority of city or town to levy tax. Such city or town is authorized to levy and collect a special tax for the purpose of raising funds to pay the expense of maintenance, operation, and control of such improvement district.

History: En. Sec. 2, Ch. 156, L. 1919; .
re-en. Sec. 4603, R. C. M. 1921.

16-1633. Rural special improvement district revolving fund. The board of county commissioners of any county in the state which may hereafter create any rural special improvement district or districts for any purpose shall, in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by resolution a fund to be known and designated as "Rural Special Improvement District Revolving Fund."

History: En. Sec. 1, Ch. 188, L. 1957.

16-1634. Moneys for fund—tax levy. For the purpose of providing funds for such revolving fund the board of county commissioners

(1) may in its discretion, from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered, and shall be, loans from such general fund to the revolving fund; and

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable prop-

erty in such county as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding rural special improvement district bonds and warrants.

History: En. Sec. 2, Ch. 188, L. 1957.

16-1635. Use of revolving fund—loans. (1) Whenever any rural special improvement district bond or warrant, or any interest thereon, shall hereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 16-1634 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the board of county commissioners may so agree to and undertake, subject to the maximum limitations imposed by said section 16-1634, which said undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 188, L. 1957.

16-1636. Loan—lien—repayment. Whenever any loan is made to any rural special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments, and on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the board of county commissioners, be transferred to the revolving fund; and after all the bonds and warrants issued on any rural special improvement district have been fully paid, all moneys remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund; if after all the bonds and warrants issued on any rural special improvement district have been fully paid and all moneys remaining in such district fund have been trans-

ferred to the revolving fund there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the revolving fund.

History: En. Sec. 4, Ch. 188, L. 1957.

16-1637. Excess moneys in revolving fund—transfer to general fund. Whenever there is in the revolving fund an amount in excess of the amount which the board deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the board may order such excess or any part thereof transferred to the general fund of the county.

History: En. Sec. 5, Ch. 188, L. 1957.

16-1638. Cancellation of record of extinguished liability accounts. The board of county commissioners in any county in the state of Montana is hereby authorized to cancel of record all or any special rural improvement district liability accounts incurred or issued prior to February 25, 1929, the liability of which has been extinguished by reason of issuance of tax deed, or by the application of the statute of limitations or other laws of the state of Montana.

History: En. Sec. 1, Ch. 3, L. 1959.

CHAPTER 44

METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS

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16-4401. Metropolitan sanitary and/or storm sewer districts—resolution of intention—contents. Whenever the public convenience and necessity may require in order to construct sanitary and/or storm sewer systems

within any county, and which said sanitary and/or storm sewer systems would serve the inhabitants of any county as well as the inhabitants of any city or town within said county, the board of county commissioners with the approval of the city or town council may create metropolitan sanitary and/or storm sewer districts.

Before creating any metropolitan sanitary and/or storm sewer district the board of county commissioners shall pass a resolution of intention so to do, which said resolution shall designate:

- (a) the proposed name of such district,
- (b) the necessity for the proposed district,
- (c) a general description of the territory or lands to be included within said district, giving the boundaries thereof,
- (d) the general character of the sanitary and/or storm sewer system and its proposed location,
- (e) the name of the engineer who is to have charge of the work, and
- (f) the estimated cost thereof.

History: En. Sec. 1, Ch. 185, L. 1957.

Sewer District No. 1, — M —, 417 P 2d 227, 228.

References

Duffie v. Metropolitan Sanitary & Storm

16-4402. City or town concurrence in resolution—notice. Upon passage of such resolution of intention, the board of county commissioners shall transmit a copy of the same to the executive head of any city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur in the resolution of the board of county commissioners a copy of the resolution of concurrence shall be transmitted to the board of county commissioners.

If the city or town council does not concur in the resolution of the board of county commissioners, the board shall have no authority to proceed further with the creation of the district. However, if the city or town council concurs in the resolution of the board of county commissioners, the board must give notice of the passage of its resolutions of intention, and of the concurrence therein by the city or town council, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation

of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Sec. 2, Ch. 185, L. 1957.

16-4403. Protests and hearing. At any time within thirty days after the date of the first publication of the passage of the resolution or intention, any owner of property liable to be assessed for said work may make written protest against the proposed work. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the board of county commissioners, after the expiration of the time within which said protest may be so made, the board of county commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed work is made by the owners of more than fifty per cent of the area in the proposed district, no further proceedings shall be taken by the board of county commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district. The board of county commissioners may adjourn said hearing from time to time.

History: En. Sec. 3, Ch. 185, L. 1957.

16-4404. Resolution creating district. When no protests have been delivered to the county clerk within thirty days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said board of county commissioners to be insufficient, or shall have been overruled, immediately thereupon the board of county commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the board of county commissioners shall pass a resolution creating the said metropolitan sanitary and/or storm sewer district in accordance with the resolution of intention theretofore introduced and passed by the board of county commissioners.

History: En. Sec. 4, Ch. 185, L. 1957.

16-4405. Description. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements it shall be sufficient to briefly describe the work or the metropolitan sanitary and or storm sewer district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 5, Ch. 185, L. 1957.

16-4406. Federal property omitted from assessment. Whenever any lot, piece or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement, or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the said board of county commissioners

shall in the resolution of intention declare that the said lots, pieces or parcels of land or any of them shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the county from its general fund.

History: En. Sec. 6, Ch. 185, L. 1957.

16-4407. Method of assessment. To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of the improvements against the entire metropolitan sanitary district, and each lot or parcel of land assessed in such district is to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

History: En. Sec. 7, Ch. 185, L. 1957.

16-4408. Cost of making improvements in special improvement districts—resolution, levy, and assessment. To defray the cost of making improvements in any special improvement district, the board of county commissioners shall, by resolution, levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent. The payment of the assessment to defray the cost of constructing any improvements in said metropolitan sanitary and/or storm sewer districts may be spread over a term of not to exceed twenty (20) years, payment to be made in equal installments.

History: En. Sec. 8, Ch. 185, L. 1957.

16-4409. Resolution—notice—hearing. Such resolution, signed by the chairman of the board of county commissioners, shall be kept on file in the office of the county clerk, and a notice signed by the county clerk, stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk, subject to inspection, shall be published in at least one publication in a newspaper published nearest to where the special improvement is to be made. Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed, the board of county commissioners shall meet and hear all such objections, and for that purpose may adjourn from day to day and may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer two days after its passage.

History: En. Sec. 9, Ch. 185, L. 1957.

16-4410. Assessments as lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, and from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Sec. 10, Ch. 185, L. 1957.

16-4411. Ex officio commissioners of district—jurisdiction. The board of county commissioners shall be ex officio commissioners of the metropolitan sanitary and/or storm sewer district formed under the provisions of this act, and shall have sole and complete jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district. The commission shall be responsible for the proper functioning and maintenance thereof, and for the condition and maintenance of all publicly owned streets, alleys, land, parks or other thoroughfares within the boundaries of such district in so far as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district.

History: En. Sec. 11, Ch. 185, L. 1957.

16-4412. Federal funds for local public works programs. The board of county commissioners are hereby authorized to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by the Congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

History: En. Sec. 12, Ch. 185, L. 1957.

16-4413. Applicable provisions of Rural Improvement District Act. The provisions of sections 16-1607, 16-1608, 16-1609, 16-1610, 16-1615, 16-1616, 16-1619, 16-1620, 16-1621, 16-1622, 16-1623, 16-1624, 16-1625, 16-1626, 16-1627 and 16-1628, Revised Codes of Montana, 1947, pertaining to the powers and duties of the county commissioners in rural improvement districts shall likewise apply under the provisions of this act.

History: En. Sec. 13, Ch. 185, L. 1957. tion, was repealed by Sec. 1, Ch. 136, Laws 1961.

Compiler's Note

Section 16-1621, referred to in this sec-

16-4414. Boundary changes. The county commissioners may by resolution make such changes in the boundaries of a district as they shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands. They may not delete any portion of the proposed area which is contributing or may reasonably be expected to contribute to the pollution of any

watercourse or a body of water in the proposed area. Nothing herein, however, shall permit the assessment of the cost of any such system against the lands remaining in the district, after any such boundary change, at a rate per square foot higher than the rate per square foot which would have been so assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in said resolution of intention, unless a new resolution of intention to recreate the district is adopted and a hearing held thereon upon notice as required for the original resolution of intention.

History: En. 16-1414 by Sec. 1, Ch. 165, L. 1965.

16-4415. Area polluting a watercourse. For the purpose of this chapter it will be conclusively presumed that an area which is within fifteen hundred (1500) feet of a proposed or existing sanitary sewer, is contributing to the pollution of a watercourse in the proposed area.

History: En. 16-4415 by Sec. 2, Ch. 165, L. 1965.

16-4416. Rates, charges and rentals for services. The board of county commissioners shall have full power and authority by ordinance or resolution to fix and establish just and equitable rates, charges and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated, controlled, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this chapter. Such rates, charges and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and may take

into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The board of county commissioners shall have authority, by resolution and after public hearing, to fix and establish the sewer rates, charges and rentals at amounts sufficient in each year, not to exceed seven dollars (\$7) per unit user per year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system; to fix and establish an additional charge not to exceed seven dollars (\$7) per unit user per year for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district not in excess of two (2) mills on each dollar of taxable valuation to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in section 16-4417.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969.

Amendments

The 1969 amendment, in the first sentence, substituted "operated, controlled, and under the jurisdiction of" for "construction in and for"; in the third sen-

tence, inserted "public" before "hearing," raised the maximum per unit user charge from \$5 per year to \$7, raised the maximum additional charge from \$3 to \$7, substituted "for the operation and maintenance . . . a sewage treatment plant" for "reasonable expense of operation and maintenance of a sewage treatment plant" and made minor changes in phraseology.

16-4416.1. Public hearing on levy for operation and maintenance of system—publication and posting of notice. Not less than thirty (30) days prior to the date of making the levy for operation and maintenance of the system, the county commissioners will hold a public hearing on the resolution. Notice clearly setting forth the subject matter of the hearing

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and the date and place thereof will be given by the commissioners by publication in a newspaper published and circulated in the county wherein the district is located once a week for three (3) consecutive weeks. The notice shall also be posted in three (3) public places within the district.

History: En. Sec. 2, Ch. 202, L. 1967.

16-4416.2. Operation and maintenance budget filed with county clerk. Not less than thirty (30) days prior to the date of the public hearing on the resolution, the county commissioners shall prepare and file in the office of the clerk and recorder of the county wherein the district is located and in the office of the board of county commissioners, a complete detailed budget for operation and maintenance of the system showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year which the levy is assessed.

History: En. Sec. 3, Ch. 202, L. 1967.

16-4416.3. County budget laws applicable to districts. The provisions of law relating to county budgets and expenditures must be complied with by a metropolitan sanitary and/or storm sewer district.

History: En. Sec. 4, Ch. 202, L. 1967.

16-4416.4. Records of collections and expenditures for operation and maintenance--delinquent property listed. The records of the district pertaining to the collection of the operation and maintenance tax levied hereunder and the records of the district pertaining to expenditures for construction of the system be kept and maintained in the office of the treasurer of the county wherein the district is located. These records shall include, but not be limited to, a list of individual property which is delinquent in payment together with the name of the owner or owners thereof.

History: En. Sec. 5, Ch. 202, L. 1967.

16-4417. Reserve fund. The board of county commissioners may, in order to secure prompt payment of any metropolitan sanitary and/or storm sewer district bonds issued in payment of the cost of improvements in and for the district, and the interest thereon as it becomes due, create, establish and maintain by resolution a fund to be designated as the "reserve fund" for each issue of such bonds. For the purpose of providing money for the reserve fund the board of county commissioners may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district such amount or amounts as may be deemed necessary or as may be agreed with the holders of the bonds, which amount or amounts so transferred shall be deemed and considered as loans from the operation and maintenance fund to the reserve fund. In connection with the issuance of metropolitan sanitary and/or storm sewer district bonds, the board of county commissioners may undertake and agree to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds, in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that money is available, and may further undertake and agree to provide money for the reserve fund pursuant to the provisions of section 16-4416, by establishing and collect-

ing rates, charges and rentals for sewer services and benefits in amounts sufficient to provide net revenues, in excess of the current costs of operation and maintenance of the system, sufficient to maintain such balance in the reserve fund as the board of county commissioners may so agree to and undertake; which said undertakings and agreements shall be binding upon the county as long as any of said bonds so offered, or any interest thereon, remains unpaid. Whenever any loan is made to any bond fund from the reserve fund, the reserve fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments, and on all unpaid assessments and installments of assessments on the district, whether delinquent or not, and on all moneys thereafter coming into the bond fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond for payment of which, or of interest thereon, such loan was made; and whenever there shall be money in the bond fund which is not required for payment of any bond of the district or interest thereon, so much as may be necessary to pay such loan shall, by order of the board of county commissioners, be transferred to the reserve fund. If after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund there still remains a debt from the district to the reserve fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the reserve fund. Nothing herein shall permit the repayment of any loan to the reserve fund at any time unless all interest theretofore accrued on the bonds has been fully paid, and all principal theretofore agreed to be paid in accordance with such redemption schedule as may be provided in the resolution or resolutions authorizing such bonds.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965.

16-4418. Previous proceedings validated. All proceedings heretofore taken for the creation of any metropolitan sanitary and/or storm sewer district and the establishment of the boundaries thereof and the hearing of protests thereon and the construction or contracting for construction of sanitary and/or storm sewer systems in and for such districts and the authorization and issuance of bonds therefor are hereby validated, ratified, approved and confirmed.

CHAPTER 45

COUNTY WATER AND SEWER DISTRICTS

- Section 16-4501. Organization of county water and/or sewer districts authorized.
- 16-4502. Organization of districts.
- 16-4503. Petition—boundaries of district—publication.
- 16-4504. Time of consideration—final hearing.
- 16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must bear testimony—suit commenced within one year—election.
- 16-4506. Election of directors—term of office.
- 16-4507. Nomination of officers.
- 16-4508. General law to govern.
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- 16-4510. Organization of board.
- 16-4511. Ordinances—enacting clause—compensation.
- 16-4512. General manager, secretary and auditor.
- 16-4513. Informality not to invalidate.
- 16-4514. Powers of district.
- 16-4515. Powers exercised by board.
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- 16-4518. Election.
- 16-4519. Notice.
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- 16-4523. Sale of bonds issued.
- 16-4524. Power to construct works across streets, etc.—right of way through state lands.
- 16-4525. Rates.
- 16-4526. Rate to pay operating expenses.
- 16-4527. Commissioners to levy water taxes.
- 16-4528. Levy and collection of tax.
- 16-4529. Initiative.
- 16-4530. Referendum.
- 16-4531. Adding to and consolidation of district.
- 16-4532. Definitions.
- 16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands.
- 16-4534. Directors may institute proceedings for exclusion—hearing—referendum.

16-4501. Organization of county water and/or sewer districts authorized. A county water and/or sewer district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

History: En. Sec. 1, Ch. 242, L. 1957; County of Yellowstone, 140 M 338, 374 P 2d 328, 332.

Constitutionality

The County Water District Act (16-4501 to 16-4534) is not unconstitutional on the ground that there is an invalid delegation of power by the legislature because inadequate standards are provided in the act since the provisions of the act are sufficiently clear, definite, and certain to enable the county water district to know its rights and obligations. *Parker v.*

The title of the County Water District Act (16-4501 to 16-4534) is not defective because it provides only for the construction of waterworks since the provisions in the body of the act for water tax and bond tax are germane to that part of the title dealing with construction of waterworks and such taxes are necessary to accomplish the general objects of the bill. *Parker v. County of Yellowstone*, 140 M 338, 374 P 2d 328, 334.

16-4502. Organization of districts. The people of any county or counties, or portion of a city or a county, or city and county, or any combination of these political divisions, whether such portion includes unincorporated territory or not, in the state of Montana, may organize a county water and/or sewer district under the provisions of this act by proceeding as herein provided.

History: En. Sec. 2, Ch. 242, L. 1957; am. Sec. 1, Ch. 167, L. 1965; am. Sec. 1, Ch. 263, L. 1967.

16-4503. Petition—boundaries of district—publication. A petition, which may consist of any number of separate instruments shall be pre-

sented at a regular meeting of the board of commissioners of the county in which the proposed district is located, signed by the registered voters within the boundaries of the proposed district, equal in number to at least ten per centum (10%) of the registered voters of the territory included in such proposed district. When the territory to be included in such proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which said territory lies and each of said petitions must be signed by at least ten per centum (10%) of the registered voters of the territory within said county to be included within such proposed district. Such petition shall set forth and describe the proposed boundaries of such district, and shall pray that the same be incorporated under the provisions of this act, and the text of such petition shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in every county in which said territory lies, together with a notice stating the time of the meeting at which same will be presented. The first publication shall be at least two (2) weeks before the time at which the petition is to be presented. When contained upon more than one (1) instrument, one (1) copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

History: En. Sec. 3, Ch. 242, L. 1957;
amd. Sec. 3, Ch. 167, L. 1965; amd. Sec. 1,
Ch. 263, L. 1967.

16-4504. Time of consideration—final hearing. With such publication, there shall be published a notice of the time of the meeting of the board when such petition will be considered and that all persons interested therein may then appear and be heard. At such time the board of commissioners shall hear the petition and those appearing thereon together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district within the county and may adjourn such hearing from time to time, not exceeding four (4) weeks in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures, thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto. On the final hearing said board shall make such changes in the proposed boundaries which be within the county as may be deemed advisable and shall define and establish such boundaries, but said board shall not modify said boundaries as to exclude from such proposed district any territory which would be benefited by the formation of such district; nor shall any lands which will not, in the judgment of said board, be benefited by such district be included within such proposed district. Any person whose lands are benefited by such district may upon his application, to the board of the county in which his lands be in the discretion of said board, have such lands included within said proposed district.

History: En. Sec. 4, Ch. 242, L. 1957,
amd. Sec. 3, Ch. 167, L. 1965.

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16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—sum commenced within one year—election. Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners of each county in which said district lies shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words "... county water and/or sewer district"), and this notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in every county in which said district lies. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize ... county water and/or sewer district under (naming the chapter containing this act) of the acts of the ... session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of voters under the general election laws of the state, and is a resident of the proposed district or the owner or lessee of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district; provided however a person who is the owner or lessee of such real property need not possess the qualifications required of a voter in subsection (1)(c) of section 23-2701, R. C. M. 1947; provided further that such voter shall be qualified if he is registered to vote in any state of the United States. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If at least forty per cent (40%) of all eligible voters within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such

county district, said board of each such county shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated, and the county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or counties in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future.

History: Amd. Sec. 1, Ch. 257, L. 1974.

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16-4506. Election of directors—term of office. At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five (5) members. In all cases where the boundaries of such district include any municipality or municipalities, said board of directors, in addition to said five (5) directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said district, one additional director, to be appointed by the board of commissioners of each county containing such territory. Any director so elected or appointed shall be an owner or lessee of real property within said district or a resident therein. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as special district election.

History: Amd. Sec. 2, Ch. 257, L. 1974.

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19-4507. Nomination of officers. (1) The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.
volume.]

(3) The petition of nomination shall consist of not less than twenty-five (25) individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION

Individual Certificate

State of

County of

Prec. No.

I, the undersigned, certify that I do hereby join in a petition for the nomination of, whose residence is at for the office of of the district to be voted for at the district election to be held in the district on the day of, 19....; and I further certify that I am a qualified elector and an owner or lessee of real property within said district, or a resident therein, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in the case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. street,, and that my occupation is

(Signed)

State of Montana

County of

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....., being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed)

Subscribed and sworn to before me this day of, 19....

Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to, at, Montana.

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the county clerk whose county contains the largest percentage of the territory of said district shall fulfill this function.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector owning or leasing or residing upon real property within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, or, in case there are several places to be

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filed in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient. 1974 SUPPLEMENT

(6) Presentation of petition. A petition of nomination, consisting of not less than twenty-five (25) individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall endorse thereon the date upon which the petition was presented to him. If the district lies in more than one county, such petition for nomination shall be presented to the county clerk whose county contains the largest percentage of the territory of said district and said county clerk shall fulfill all duties assigned to county clerks in elections under this act.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition cannot be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five (25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the

election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners of each county in which the district lies shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers of general circulation published in each county in which such district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION

..... District,
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at district election, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected; in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as herein-after provided.

(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of commissioners, and transmitted to the board of directors of said district.

(22) Informality not to invalidate. No informality in conducting district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act.

History: En. Sec. 7, Ch. 212, L. 1957;
amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1,
Ch. 263, L. 1967.

16-4508. General law to govern. The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far they may be applicable, shall govern all district elections, except as in this act otherwise provided; provided, however, that where a corporation owns real property within the boundaries of the district, the president, vice-president or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation; provided also that an elector owning or leasing real property within the district need not reside within the district in order to vote, and provided that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any district election, including any district bond election. If the district lies in more than one county, the board of commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election.

History: Amd. Sec. 4, Ch. 257, L. 1974.

16-4509. Officers subject to recall. Every incumbent of an elective office, whether elected by popular vote for a full term, or elected by the board of directors to fill a vacancy, or appointed by a mayor or by said

board of commissioners for a full term, is subject to recall by the voters of any district organized under the provisions of this act, in accordance with the recall provisions of sections 11-3220 to 11-3227, both inclusive, applicable to officers under the commissioner-manager plan.

History: En. Sec. 9, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4510. Organization of board. The board of directors shall be the governing body of such district. It shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided; it shall choose one of its members president, and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called. All legislative sessions of the board of directors whether regular or special shall be open to the public. A majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors shall establish rules for its proceedings.

History: En. Sec. 10, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4511. Ordinances—enacting clause—compensation. The board of directors shall act only by ordinance or resolution. The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the total members of the board. The enacting clause of all ordinances passed by the board shall be in these words: "Be it ordained by the board of directors of district as follows:" All resolutions and ordinances shall be signed by the president of the board of directors and attested by the secretary. Each of the members of the board of directors shall receive for each attendance at the meetings of the board twenty dollars (\$20), and shall receive no other compensation. No director, however, shall receive pay for more than three (3) meetings in any calendar month. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors.

History: En. Sec. 11, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4512. General manager, secretary and auditor. The board of directors shall at its first meeting, or as soon thereafter as practicable, appoint, by a majority vote, a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor. The general manager, secretary, and auditor, shall receive such compensation as the board of directors shall determine, and each shall serve at the pleasure of the board.

History: En. Sec. 12, Ch. 242, L. 1957.

16-4513. Informality not to invalidate. No informality in any proceeding or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any district, and any proceeding wherein the

validity of such incorporation is denied shall be commenced within three (3) months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said district, and all proceedings in respect thereto, shall be held to be valid and in every respect legal and incontestable.

History: En. Sec. 13, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4514. Powers of district. Any district incorporated as herein provided shall have power:

- (1) To have perpetual succession;
- (2) Sue and be sued. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;
- (3) Adopt seal. To adopt a seal and alter it at pleasure;
- (4) Hold property. To take by grant, purchase, gift, devise, or lease; to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;
- (5) Acquire waterworks. To construct, purchase, lease, or otherwise acquire, and to operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands and rights useful or necessary to store, conserve, supply, produce, convey or drain water or sewage for purposes beneficial to the district, such purposes to include but not be limited to, flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply and other similar purposes.
- (6) Store water. To store water for the benefit of the district; to conserve water for future use; to appropriate, acquire and conserve water and water rights for the purposes of the district; to commence, maintain, intervene in and compromise, in the name of the district, and to assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated therein; to commence, maintain, intervene in, defend and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants; and to commence, maintain and defend actions and proceedings to prevent any interference with the aforesaid waters or rights as may endanger the inhabitants or lands of the district;
- (7) Lease waterworks. To lease of and from any person, firm, or public or private corporation with the privilege of purchase, or otherwise, existing water rights, waterworks, sewerworks, canals or reservoir systems; and to carry on and maintain the same; also to sell water, or the use thereof, for household or domestic use or other similar purposes; and whenever there is a surplus of water to sell or otherwise dispose of the same, to municipalities or towns or to consumers located within or without the boundaries of the district;

(8) Accept assistance. To accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water or sewer development projects; and co-operate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local co-operation requirements of any project involving control, conservation and use of water.

(9) Borrow money. To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof;

(10) Levy taxes. To cause taxes to be levied in the manner provided for herein for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided;

(11) Make contracts. To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers.

History: En. Sec. 14, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4515. Powers exercised by board. The powers herein enumerated shall, except as herein otherwise provided, be exercised by the board of directors above provided for and elected and appointed as described herein.

History: En. Sec. 15, Ch. 242, L. 1957.

16-4516. Duties of officers of board—depository of funds—officers' bonds. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The secretary shall countersign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The general manager shall have full charge and control of the maintenance, operation and construction of all works and systems of the district, with full power and authority to employ and discharge all employees and assistants at pleasure, prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board of directors. The general manager shall report to the board of directors in accordance with such rules and regulations as they may adopt. The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least (3) members of the board of directors and by the general manager. The board of directors shall also designate a depository or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss, and who shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe. The general manager, secretary and auditor, and all other employees or assistants of said district who may be required so to do by the board of di-

rectors, shall give bonds to the district conditioned for the faithful performance of their duties as the board of directors from time to time may provide.

History: En. Sec. 16, Ch. 242, L. 1957;

16-4517. Bonded indebtedness. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957; maximum rate of interest to be paid,
amd. Sec. 26, Ch. 234, L. 1971. which shall not exceed seven per cent
 (7%), per annum" before "and the proposi-
 tion to be submitted to the electors" at
 the end of the section.

Amendments

The 1971 amendment deleted "and the

16-4518. Election. The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred. It shall be the duty of the board of directors to provide for holding such special election on the day so fixed, in accordance with the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided.

History: En. Sec. 18, Ch. 242, L. 1957.

16-4519. Notice. Such board of directors shall give notice of the holding of such election, which notice shall contain the resolution adopted by the board of directors of the district, boundaries of voting precincts, which shall include therein only the lands to be benefited, as stated in such resolution, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector and two clerks in each precinct.

History: En. Sec. 19, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4520. Publication. Such notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in each county wherein such district is located, which newspaper or newspapers shall be designated by the board of directors. Every qualified elector, owning or leasing or residing upon real property, within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district.

History: Amd. Sec. 5, Ch. 257, L. 1974.

16-4521. Canvass of Returns. The returns of such election shall be made to and the votes canvassed by said board of directors on the first Monday following said election, and the results thereof ascertained and declared in accordance with the general election laws of the state, so far as they may be applicable, except as herein otherwise provided. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results. No irregu-

larities or informalities in conducting such election shall invalidate the same, if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein, said election shall be called, managed and directed as is by law provided for general elections in this state applicable thereto, except as herein otherwise provided.

History: En. Sec. 21, Ch. 242, L. 1957.

16-4522. Sixty per cent vote necessary. If from such returns it appears that sixty per cent (60%) or more of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

16-4523. Value of bonds issued. Any bonds issued by any district organized under the provisions of this act are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state of Montana.

History: En. Sec. 23, Ch. 242, L. 1957.

16-4524. Power to construct works across streets, etc.—right of way through state lands. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said works may intersect or cross; provided, such works are constructed in such manner as to afford security for life and property, and said board of directors shall restore the crossings and intersections to their former state as near as may be, or in manner not to have impaired unnecessarily their usefulness. The right of way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state.

History: En. Sec. 24, Ch. 242, L. 1957.

16-4525. Rates. The board of directors shall fix all water and sewer rates, and shall through the general manager collect the sewer charges and the charges for the sale and distribution of water to all users.

History: En. Sec. 25, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4526. Rate to pay operating expenses. The board of directors in the furnishing of water, sewer service, other services and facilities, shall fix such rate, fee, toll, rent or other charge as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due.

History: En. Sec. 26, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

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16-4527. Commissioners to levy water taxes. If from any cause, the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must, at least fifteen (15) days before the first day of the month in which the board of commissioners of the county, or city and county, or counties in which such district is located, are required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board or boards of commissioners, and to the auditor or auditors, respectively, an estimate in writing of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due, and of the amount of money required to establish reasonable reserve funds for either of said purposes, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness, and also of the amount of money required by the district for any other purpose in this section set forth, and the board of commissioners of such county or city and county must annually, at the time and in the manner of levying other county or city and county taxes and until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected, the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof to be known as the "..... district bond tax"; and until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof to be known as the "..... district water and/or sewer tax.

When the amount of money required for any purpose in this section enumerated has been determined, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said district, in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed. Provided however that where the district lies in more than one county, the same method of assessment shall be used by each board of county commissioners.

When the written estimate of the amount of money required has been delivered to the board of commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof. Such notice shall be given:

(1) By posting notice thereof in five (5) public places within the county and within the boundaries of the lands upon which the tax is to be levied, and

(2) By publishing a copy of the notice for ten (10) consecutive days

in a daily newspaper or in two (2) issues of a weekly newspaper published in each county wherein the district is located.

(3) By forwarding regular first class mail or registered mail, at least ten (10) days prior to the hearing provided for in paragraph (d) of this section, a copy of the notice addressed to the owners of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district.

The legislative assembly hereby finds, determines and declares that the giving of notice in accordance with paragraphs (1), (2) and (3) of this section is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in paragraph (d) of this section, and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

Such notice shall state:

- (a) The amount of money required;
- (b) The method of assessment which the board or boards of commissioners intends to employ;
- (c) The boundaries or description of the lands to be assessed, which said boundaries or description may be recited in full, or may be given by reference to any instrument on file or of record in the office of the clerk and recorder, treasurer or assessor of the county or counties in which the district or part thereof is situate; and
- (d) The time when and the place where, the board or boards of commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining thereto, which said hearing shall be had not less than fifteen (15) days after the last publication of the notice.

At the time and place designated for said hearing any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered and ruled upon by the board of commissioners. The board of commissioners may adjourn said hearing from time to time.

Where such tax is, for any reason, deemed unlawful by the person whose property is taxed, whether he has protested the same at the hearing above provided or not, he may pay the tax or the installments thereof under protest in the manner provided by section 84-4502, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest, and for no other reasons and on no other grounds; provided, that all of the provisions of said section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 27, Ch. 242, L. 1957; 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 263, L. 1967.
1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L.

Constitutionality

This section is not unconstitutional because it delegates to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so taxed in violation of section 36, article V of the constitution. *Parker v. County of Yellowstone*, 140 M 533, 374 P 2d 328, 331.

The owners of land, which had been included in a county water district organized in August 1953 under chapter 242, Laws of 1957 (16-4501 to 16-4534) were not deprived of due process because no adequate notice was given of the hearing to create the district since the inclusion

of land in the improvement district was not a taking of property. Rights of the owners were not affected until the levy of assessment in August 1960, at which time the provisions of this section were such as to afford them due process. *Parker v. County of Yellowstone*, 140 M 533, 374 P 2d 328, 335.

The manner of assessing property under this section on an area basis does not violate the fourteenth amendment to the federal constitution where under such method the property assessed would be enhanced to the extent of the burden imposed. *Parker v. County of Yellowstone*, 140 M 533, 374 P 2d 328, 336.

16-4528. Levy and collection of tax. Such taxes for the payment of any such bonded debt shall be levied on the property benefited thereby, as stated by the board of directors in the resolution declaring the necessity therefor, and all taxes for other purposes shall be levied on all property in the territory comprising the district. All such taxes shall be collected at the same time and in the same manner and form as county taxes are collected, and when collected shall be paid to the district for which such taxes were levied and collected. If such taxes are levied for the payment of a bonded debt for the benefit of certain property within the district, as so stated in the resolution of the board of directors aforesaid, such taxes shall be a lien upon each lot or parcel of said property to the extent of the levy of said taxes upon said lot or parcel; and all taxes for other purposes shall be a lien upon each lot or parcel of land within the entire area comprising the district, to the extent of the levy of said taxes upon said lot or parcel; and said taxes, whether for the payment of a bonded indebtedness or for other purposes, shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes. Such taxes if not paid shall become delinquent at the same time as do county taxes.

History: En. Sec. 28, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 45, L. 1959.

16-4529. Initiative. Ordinances may be passed by the electors of any district organized under the provisions of this act in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

History: En. Sec. 29, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4530. Referendum. Ordinances may be disapproved and thereby vetoed by the electors of any such district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

History: En. Sec. 30, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4531. Adding to and consolidation of district. Any portion of any county or any municipality, or both, may be added to any district organized

under the provisions of this act, at any time, upon petition presented in the manner therein provided for the organization of such district, which petition may be granted by ordinance of the board of directors of such district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such district and in the proposed addition, at a general or special election held as herein provided, within seventy (70) days after the adoption of such ordinance. If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such district is located. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such district is situated. From and after the date of such certificate the territory named therein shall be deemed added to and form a part of said district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto.

Two or more districts organized under the provisions of this act may consolidate, at any time, upon petitions submitted to the board of directors of each such district. Such petitions shall be in the form required for petitions for the organization of districts. Each such petition shall be signed by not less than ten per cent (10%) of the registered voters of the territory included within said district. Said petitions may be granted by ordinance of the board of directors of each of said districts. Such ordinances shall be submitted for adoption or rejection to the vote of the electors in such districts at general or special elections held as herein provided within seventy (70) days after the adoption of such ordinances. If such ordinances are approved, the president and secretary of the boards of directors of each of said districts shall certify that fact to the secretary of state and to the county clerk of the county or counties in which such districts are located. Upon the receipt of said certificate the secretary of state shall, within ten (10) days, issue his certificate, reciting the passage of said ordinances and the consolidation of said districts. A copy of such certificate shall be transmitted to and filed with the county clerk of each county in which such consolidated district is situated. From and after the date of such certificate, the said districts shall be deemed to be consolidated and shall consist of one district with all the rights, privileges and powers set forth in this act and necessarily incident thereto. The number and manner of selection and election of directors of the consolidated district shall be the same as the number and manner of selection and election of directors of newly organized districts.

History: En. Sec. 31, Ch. 212, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

16-4532. Definitions. Nothing in this act shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or sewers or the supply of water to, or the acquisition thereof by counties or municipalities within this state. The term "municipality," as used in this act, shall include a consolidated city and county, city or town, and shall be understood and so construed as to include, and is hereby de-

clared to include, all corporations heretofore organized and now existing and those hereafter organized for municipal purposes within such districts. The term "county" shall mean one or more counties and shall be understood and construed to include "city and county." In municipalities in which there is no mayor the duty imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees or other chief executive of the municipality. The word "district" shall apply, unless otherwise expressed or used, to a district formed under the provisions of this act, and the word "board" and the words "boards of directors" shall apply to the board of directors of such district.

History: En. Sec. 32, Ch. 242, L. 1957;
amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1,
Ch. 263, L. 1967.

16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands. Any territory, included within any district formed under the provisions of this act, and not benefited in any manner by such district, or its continued inclusion therein, may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory. Said petition shall describe the territory sought to be excluded and shall set forth that such territory is not benefited in any manner by said district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district. Such petition shall be filed with the secretary of the district and shall be accompanied by a deposit with such secretary of the sum of one hundred dollars (\$100.00), to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order hereinafter provided for, any unconsumed balance to be returned to the petitioner. Upon the filing of such petition with the secretary of the district he shall call a meeting of the board of directors of the district at a time not less than twenty-five (25) days nor more than fifty (50) days after the filing of the petition and cause a notice of the filing of such petition to be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper within said district, if there be one, and if not, in some newspaper of general circulation published in each county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof, which shall be the regular meeting place of the board of directors of the district; provided, that the board may adjourn the hearing to a more convenient meeting place within the district. Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing. If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if it appears that

such lands, or some portion thereof, will not be benefited by their continued inclusion in the district, then the board of directors shall make an order that such lands, or such portion thereof, be excluded from the district, such order to describe specifically the lands so excluded. From the time of the making of such order the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded. A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county or counties in which the district is situated and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

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History: En. Sec. 33, Ch. 242, L. 1957;
amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1,
Ch. 263, L. 1967.

16-4534. Directors may institute proceedings for exclusion—hearing—referendum. The board of directors of any district formed under the provisions of this act may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included, or which may not be benefited in any manner by their continued inclusion therein. Such proceedings shall be initiated by the board of directors by the passage of a resolution requiring all persons interested to appear and show cause before the board of directors, at a time and place specified, why such lands, describing them, should not be excluded from the district and fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing. Upon the passage of such resolution the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board of directors by its resolution hereinbefore mentioned shall be not less than twenty-five (25) days nor more than fifty (50) days after the passage of such resolution and the place of hearing so fixed shall be a convenient place within the district; provided that the final action of the board of directors under this section shall be subject to the referendum by the electors of the district according to section 16-4530.

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History: En. Sec. 34, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 263, L. 1967.

Separability Clause

Section 2 of Ch. 263, Laws 1967 read:
"If any section, paragraph, sentence, clause

or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act."

16-4535. Elections may be combined. The board of commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness, so that the electors of the district may vote on all of these matters on the same date and at the same time. If the elections are combined the board of commissioners shall so declare by resolution containing the provisions required by 16-4517. Candidates for the office of director shall be nominated in the manner required by 16-4507. Whenever the elections are combined, notice of the election, the names of the candidates and the details concerning the bonded indebtedness may be given in the manner prescribed by 16-4505 and 16-4507 or either of them.

History: En. 16-4535 by Sec. 1, Ch.
107, L. 1969.

Title of Act

Effective Date
Section 2 of Ch. 109, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved

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CHAPTER 40

REFUSE DISPOSAL AREAS

- Section 69-4001. Legislative findings and policy.
69-4002. Definitions.
69-4003. Dumping in an unlicensed area is prohibited.
69-4004. License required.
69-4005. State department of health to approve disposal area.
69-4006. Revocation of or refusal to renew license.
69-4007. Rules and regulations—inspections and recommendations.
69-4008. Landowner's rights preserved—publicly operated disposal areas.
69-4009. Penalty for violations.
69-4010. Repeal of conflicting acts—acts preserved.

69-4001. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated refuse disposal areas. It is declared the public policy of this state to control refuse disposal areas to protect the public health and safety.

History: En. Sec. 1, Ch. 35, L. 1965.

Cross-Reference

Refuse disposal districts, secs. 69-6001 to 69-6011

69-4002. Definitions. Unless the context requires otherwise, in this chapter: (1) "Garbage" means putrescible animal and vegetable wastes resulting from handling, preparation, cooking, and consumption of food.

(2) "Refuse" means putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yards clippings, and solid market and solid industrial wastes.

(3) "Rubbish" means nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, abandoned automobiles, tin cans, wood, glass, bedding, crockery, and similar materials.

(4) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(5) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

History: Amd. Sec. 26, Ch. 349, L. 1974.

69-4003. Dumping in an unlicensed area is prohibited. No person, partnership, company or corporation shall hereafter dispose of any garbage, rubbish or refuse in any place except as permitted under this act.

History: En. Sec. 3, Ch. 35, L. 1965.

69-4004. License required. Each year each person, partnership, company or corporation desiring to operate a refuse disposal area shall obtain a license for operating same from the local, county or district board of health having jurisdiction. To obtain a license to operate a disposal area, application to the local, county or district board of health having jurisdiction, must be made on forms provided by it. The application shall contain the name and residence of the applicant, the location of the

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proposed disposal area and such other information as the ~~state~~ department of ~~health~~ may by regulation require. There shall be paid to the local, county or district board of health with each application for such license or for renewal of such license, an annual license fee of twenty-five dollars (\$25). This fee is to be deposited in the general fund of the county in which the refuse disposal area is to be located.

History: En. Sec. 4, Ch. 35, L. 1965;
amd. Sec. 1, Ch. 349, L. 1969.

Collateral References
Garbage or rubbish removal services, 83
ALR 2d 799.

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69-4005. State department of health to approve disposal area. Upon receipt of the application, the local, county or district board of health having jurisdiction shall notify the ~~state~~ department of ~~health~~ who will then cause to be made an inspection of the proposed site and determine if the proposed operation can comply with this act and rules and regulations adopted pursuant thereto. The ~~state~~ department of health shall also inspect and approve plans which have been drawn up by the applicant for the creation of a refuse disposal area. When the ~~state~~ department of health reports favorably upon the application, the local, county or district board of health having jurisdiction may issue a license to the applicant. All licenses shall expire one year after issuance, but may be renewed upon payment of an annual fee of twenty-five dollars (\$25).

History: En. Sec. 5, Ch. 35, L. 1965;
amd. Sec. 2, Ch. 349, L. 1969.

39 C.J.S. Health §§ 4, 9 et seq.
39 Am. Jur. 2d 345, 355 et seq., Health,
§§ 4, 19 et seq.

Collateral References

Health 6, 7 (3), 20 et seq.

Cross-References

State department abolished and func-

tions transferred, secs. 82A-602 (1), 82A-604.

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69-4006. Revocation of or refusal to renew license. The local, county or district board of health having jurisdiction may revoke or refuse to renew any license after reasonable notice and hearing if it finds that the disposal area is not operated in a sanitary manner, as set forth by this law and by the rules and regulations adopted under this law.

History: En. Sec. 6, Ch. 35, L. 1965.

69-4007. Rules and regulations—inspections and recommendations. The ~~state~~ department of ~~health~~ is authorized to promulgate rules and regulations for the operation of refuse disposal areas. Said regulations shall be prepared and published and shall contain sanitary standards for disposal areas. The ~~state~~ department of health shall cause all licensed disposal areas to be inspected and recommended to the local, county or district board of health action which may be taken to enforce the provisions of this act.

History: En. Sec. 7, Ch. 35, L. 1965;
amd. Sec. 3, Ch. 349, L. 1969.

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69-4008. Landowner's rights preserved—publicly operated disposal areas. This act shall not be construed to prohibit any person from disposing of his own garbage, rubbish or refuse upon his own land as long as such disposal does not create a nuisance. Any incorporated city, town, rural improvement district or county may establish a disposal area and

operate same without paying the annual license fee, but must meet all other requirements of this act.

History: En. Sec. 8, Ch. 35, L. 1965;
amd. Sec. 4, Ch. 319, L. 1969.

69-4009. Penalty for violations. Any person violating this act or regulations prescribed by the state department of health under this act, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars (\$50), nor more than five hundred dollars (\$500). Each day upon which a violation of this act occurs shall be considered a separate offense.

History: En. Sec. 9, Ch. 35, L. 1965; 29 C.J.S. Health §§ 29-35.
amd. Sec. 5, Ch. 319, L. 1969. 39 Am. Jur. 2d 374, Health, § 37.

Collateral References
Health 37-43.

69-4010. Repeal of conflicting acts—acts preserved. All acts and parts of acts in conflict herewith are hereby repealed, except that section 32-1014 and section 94-3542, R. C. M. 1947, shall in no way be affected by this act.

History: En. Sec. 10, Ch. 35, L. 1965.

Compiler's Note

Section 32-1011, referred to in this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

Separability Clause

Section 11 of Ch. 35, Laws 1965 read

"It is the intent of the legislative assembly that if a part of this [act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect, and all valid applications that are separable from the invalid applications."

CHAPTER 49

PUBLIC WATER SUPPLY

Section 69-4901. Public policy of the state.

69-4902. Definitions.

69-4903. Functions, powers and duties of state board of health.

69-4904. Powers and duties of the state department of health.

69-4905. Prohibited acts.

69-4906. Drilling well to furnish water for public consumption—records required.

69-4907. Appeal from rule or standard—injunction to require compliance.

69-4908. Penalty.

69-4901. Public policy of the state. It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses.

History: En. Sec. 140, Ch. 197, L. 1967.

94 C.J.S. Waters § 232.

56 Am. Jur., Waters, p. 808 et seq., § 384 et seq.; p. 826 et seq., § 405 et seq.

Cross-Reference

Water treatment plants and distribution systems, secs. 69-5901 to 69-5912.

Law Review

Hines, "Nor Any Drop To Drink: Public Regulation of Water Quality," 52 Iowa L. Rev. 186, 422, 799 (Oct. '66-April '67).

Collateral References

Waters and Water Courses 196.

69-4902. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Contamination" means impairment of the quality of state waters by sewage or industrial wastes creating hazard to human health;

(2) "Pollution" means the alteration of any of the properties of state waters which is detrimental to their most beneficial use;

(3) "Drainage" means rainfall, surface, and subsoil water;

(4) "Sewage" means domestic and manufacturing filth and waste;

(5) "State waters" means any body of water, irrigation system, or drainage system either surface or underground;

(6) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves ten (10) or more families, or twenty-five (25) or more persons on a regular and continuous basis;

(7) "Person" means any person, firm, corporation, water or ice company, public institution, municipality or other political subdivision of the state.

History: En. Sec. 141, Ch. 197, L. 1967.

69-4903. Functions, powers and duties of state board of health. The state board of health shall:

(1) have general supervision over all state waters which are directly or indirectly being used by a person for a public water supply or domestic purposes, or source of ice;

(2) adopt rules, standards, and issue orders to prevent pollution and protect the quality of water and for the collection and analysis of samples of water used for drinking or domestic purposes giving legal notice of the adoption by publication or posting, and by filing a copy in the office of the clerk of the municipality or county where the rule or standard is effective.

History: En. Sec. 142, Ch. 197, L. 1967.

Collateral References

Health Code.

39 C.J.S. Health §§ 4, 9.

39 Am. Jur. 2d 315, Health, § 4; 56 Am. Jur. 831, Waters, § 412.

Power of board of health to prescribe means or methods of keeping water supply free of impurities. 23 ALR 228.

Constitutionality and construction of statutes and ordinances for protection of municipal water supply. 72 ALR 673.

Purification of water: authorizing health agency to require purification of water supply as unlawful delegation of legislative power. 43 ALR 2d 454.

Law Review

Clark, "Ground Water Legislation in the Light of Experience in the Western States," 22 Mont. L. Rev. 42, 57 (Fall 1969).

Cross-References

State department of health abolished

and functions transferred, sees. 82A-602 (1), 82A-604.

DECISIONS UNDER FORMER LAW

Ex Parte Investigation

Former section 69-1314 authorizing investigation of alleged pollution of water supply upon complaint and entry of order prohibiting continuance of pollution did not provide for a public trial, but contemplated an ex parte investigation by the state board of health; it could, therefore,

upon information from any source and before it had heard any testimony, make a valid order prohibiting a city from polluting a stream which was a source of water supply for domestic uses. *Miles City v. State Board of Health*, 39 M 405, 410, 102 P 696.

69-4904. Powers and duties of the state department of health. The state department of health shall:

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(1) upon complaint to the department, or to the mayor or health officer of any municipality or to the managing board or officer of any public institution, make an investigation of any alleged pollution of a water supply, and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their purity and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns, and persons having or about to construct systems for water supply, drainage, waste water and sewage as to the most appropriate source of water supply and the best method of assuring its purity;

(4) advise persons as to the best method of purifying and disposing of their drainage, sewage, or waste water with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage, or sewage may tend to pollute any waters as to the best method of preventing pollution;

(6) with approval of the state board, fix fees for services rendered in analyzing water and inspections to cover costs of the service and deposit receipts in the general fund;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of purifying water, drainage, waste water, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter upon any premises at reasonable times to determine sources of pollution or danger to water supplies and whether rules and standards of the state board are being obeyed;

(9) notify the attorney general of violations of laws on pollution of state waters.

History: En. Sec. 113, Ch. 197, L. 1967.

Law Review

Collateral References

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

Health 57 (3).

39 U.S. Health §§ 4, 9.

39 Am. Jur. 2d 345, Health, § 4; 56 Am. Jur. 831, Waters, § 412.

69-4905. Prohibited acts. A person shall not:

(1) discharge polluting matter of any kind that will pollute the quality of state waters used by a person for domestic use or as a source of supply by a city, town, public institution, water or ice company;

(2) discharge human excrement, sewage, drainage, refuse, or polluting matter into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, refuse, or polluting water is purified to render it harmless as prescribed by the state board;

(3) build or operate any railroad, logging road, logging camp, electric or manufacturing plant of any kind on any watershed of a public water supply system, unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the state board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) construct, alter, or extend any system of water supply, water distribution, sewer, drainage, waste water, or sewage disposal without first submitting necessary maps and plans and specifications to the department for their advice and approval.

History: En. Sec. 144, Ch. 197, L. 1967.

Collateral References

Health 28, 33.

39 C.J.S. Health §§ 21, 28.

39 Am. Jur. 2d 360, Health, § 22; 56 Am. Jur. 808-823, 833-836, Waters, §§ 384-401, 415, 416.

Validity of prohibition or regulation of bathing, swimming, boating, fishing, or the like, to protect public water supply. 56 ALR 2d 790.

69-4906. Drilling well to furnish water for public consumption—records required. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness and character of different strata, and other information prescribed by the board. Data shall be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.

History: En. Sec. 145, Ch. 197, L. 1967.

69-4907. Appeal from rule or standard—injunction to require compliance. Any person aggrieved by a rule or standard of the state board may appeal to the district court. While the appeal is pending, the rule or standard of the state board is in force. The state board may request an injunction from the district court to require compliance with rules and standards.

History: En. Sec. 146, Ch. 197, L. 1967.

Collateral References

Health 11, 37.

39 C.J.S. Health §§ 36, 38.

39 Am. Jur. 2d 358, 373, Health, §§ 21, 36.

69-4908. Penalty. Violation of this chapter, or any rule or order of the state board or department under the provisions of this chapter, is punishable for each offense by a fine of not more than one thousand dollars (\$1,000), imprisonment for not more than one (1) year, or both.

History: En. Sec. 147, Ch. 197, L. 1967.

Collateral References

Health 37-43; Waters and Water Courses 212.

39 C.J.S. Health §§ 29-35; 91 C.J.S. Waters § 313.

39 Am. Jur. 2d 374, Health, § 37.

CHAPTER 50

SUBDIVISIONS

- Section 69-5001. Public policy of the state.
69-5002. "Subdivision" defined.
69-5003. Filing of map or plat subject to sanitary restrictions—submission to and approval by state department of health—removal or modification of restrictions.
69-5004. Filing or recording of noncomplying map or plat prohibited.
69-5005. Rules for administration and enforcement of chapter.
69-5006. Request for hearing.
69-5007. Enforcement.
69-5008. Penalties.
69-5009. Records of state and other agencies.

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69-5001. Public policy of the state. It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses; and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation and wildlife.

History: En. Sec. 148, Ch. 197, L. 1967; amended. Sec. 1, Ch. 509, L. 1973.

ence to solid waste disposal; and added the final two clauses, beginning with "to protect the quality and potability."

Amendments

The 1973 amendment inserted the ref-

69-5002. Definitions. As used in this chapter unless the context clearly indicates otherwise the following words or phrases shall have the following meanings:

(1) "Subdivision" means the division of land, or land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less, exclusive of public roadways, in size, without regard to

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the method of description thereof, in order that the title or possession of the parcels or any interest therein may be sold, rented, leased, or otherwise conveyed either immediately or in the future, and shall include any resubdivision of land; and shall further include any condominium or areas providing multiple space for camping trailers, house trailers or mobile homes; provided further that a division of land is a subdivision when the division creates a second or any subsequent parcel for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on July 1, 1973, where any of the parcels segregated from the original tract is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof. The plat of a subdivision so created shall show all of the parcels segregated from the original tract whether contiguous or not.

(a) "Subdivision" shall include any condominium or areas providing multiple space for camping trailers, house trailers, or mobile homes, regardless of the size of the parcel of land upon which the same is situated.

(2) "Board" means the board of health and environmental sciences.

(3) "Department" means department of health and environmental sciences.

(4) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter or building requiring facilities for the supply of water or the disposition of sewage or solid waste until the department has approved plans for those facilities.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste.

(6) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

History: En. Sec. 149, Ch. 197, L. 1967;
amd. Sec. 2, Ch. 509, L. 1973.

Amendments

The 1973 amendment completely rewrote this section, including subdivision (1); and added subdivisions (2) through (6).

69-5003. Filing of map or plat with county clerk and recorder. (1) A person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent building in a subdivision when the status of the subdivision is conditional; and a county clerk and recorder may not accept a subdivision plat for filing until:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and

(b) the department has indicated by stamp or certificate, that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction.

(2) A person may not construct or use any facilities which deviate from the plans and specifications filed with the department until the department has approved the deviation.

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History: En. Sec. 150, Ch. 197, L. 1967;
amd. Sec. 4, Ch. 509, L. 1973.

Amendments

The 1973 amendment completely rewrote this section. For prior law, see parent

69-5004. Filing or recording of noncomplying map or plat prohibited.
The county clerk and recorder shall not file or record any map or plat showing a subdivision unless it complies with the provisions of this chapter.

History: En. Sec. 151, Ch. 197, L. 1967.

69-5005. Rules for administration and enforcement of chapter. (1)
The department shall adopt reasonable rules, including adoption of sanitary standards, necessary, for administration and enforcement of this chapter.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area,

(ii) total number of proposed dwelling units;

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(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(e) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(f) standards and technical procedures applicable to water systems;

(g) standards and technical procedures applicable to solid waste disposal;

(h) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

History: En. Sec. 152, Ch. 197, L. 1967;
amd. Sec. 3, Ch. 509, L. 1973.

Amendments

The 1973 amendment divided the section into subsections (1) and (2); sub-

stituted "department" for "state board" at the beginning of subsection (1); substituted "adopt reasonable rules" for "make rules" in subsection (1); inserted the reference to solid waste disposal in subsection (2); inserted "distance from

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lakes, streams, and wells" in subsection (2); added "and the quality of life for uses relating to agriculture, industry, rec-

reation, and wildlife" at the end of subsection (2); added subsection (3); and made minor changes in phraseology.

69-5006. Request for hearing. Upon denial of approval of subdivision plans and specifications relating to environmental health facilities the person who is aggrieved by such denial may request a hearing before the board. Such hearings will be held pursuant to the Montana Administrative Procedure Act [§2-4201 to §2-4225].

History: En. Sec. 5, Ch. 509, L. 1973.

Title of Act

An act to amend sections 69-5001, 69-5002, 69-5003 and 69-5005, R. C. M. 1947, by broadening the statement of public policy to include solid waste disposal and to refer to quality of water for all uses; revising the definition of subdivision; adding other definitions; revising the provisions for making rules and standards;

requiring approval of subdivision plans and plans and specifications by the department of health before filing with county clerk and recorder; providing for enforcement proceedings and hearings on alleged violations; providing remedies and sanctions relating to violations; providing for use of records and co-operation of other agencies; and providing for effect of invalidity of part of act.

69-5007. Enforcement. (1) If a written complaint alleging violation is made to the department, or if the department has reason to believe that a person has violated this act or any rule thereunder, and if a violation is found to exist, the department shall issue notice and hold a hearing pursuant to the Montana Administrative Procedure Act [§2-4201 to §2-4225]. In addition to or instead of issuing an order, the department may initiate appropriate action for injunction or for recovery of penalty as provided in the act.

History: En. Sec. 6, Ch. 509, L. 1973.

Compiler's Notes

As enacted, this section contained no subsection (2).

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69-5008. Penalties. (1) A person violating any provision of the act or any rule or order issued under this act is guilty of an offense and subject to a fine of not to exceed one thousand dollars (\$1,000).

(2) Action under subsection (1) of this section does not bar enforcement of this act or rules or orders issued under it by injunction or other appropriate remedy.

(3) The purpose of this section is to provide additional and cumulative remedies. This act does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this chapter or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

History: En. Sec. 7, Ch. 509, L. 1973.

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69-5009. Records of state and other agencies. The department may require the use of records of all state, county and municipal agencies and may seek the assistance of those agencies. State, county and city officers and employees, including local health officers and sanitarians, shall co-operate with the board and the department in furthering the purposes of this act, so far as is practical and consistent with their own duties.

History: En. Sec. 8, Ch. 509, L. 1973.

Separability Clause

Section 9 of Ch. 509, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

CHAPTER 59

WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS

Section 69-5901.	Legislative findings—policy of state.
69-5902.	Definitions.
69-5903.	Board of certification to assist director—composition—terms of members—meetings and organization—examination of candidates for certification.
69-5904.	Classification of treatment plants and distribution systems.
69-5905.	Certification of operators by director.
69-5906.	Operator of treatment plant or distribution system to be certified—certification of operators previously in charge or certified by other agency.
69-5907.	Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate.
69-5908.	Application for operator's certificate—payment of fee—use of proceeds.
69-5909.	Term of operator's certificate—renewal fee—suspension and revocation—reinstatement.
69-5910.	Rules and regulations of board.
69-5911.	Unlawful to operate treatment plant or distribution system without certified operator.
69-5912.	Violation a misdemeanor—each day as separate offense.

69-5901. Legislative findings—policy of state. It is hereby found and declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's waters are endangered by persons not properly qualified to operate the waste water treatment plants. It is declared the public policy of this state to control by certifying those persons working in these occupations in order to protect the public health and safety.

History: En. Sec. 1, Ch. 239, L. 1967.

Collateral References

Cross-References

Waters and Water Courses—180 et seq.
94 C.L.S. Waters § 226 et seq.

Public water supply, secs. 69-4901 to 69-4908.

Subdivisions, sanitary restrictions, sec. 69-5001 to 69-5005.

69-5902. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of water and waste water operators provided for in section 82A-612.

(2) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or waste water treatment plant. Operators of plants or systems serving less than ten (10) families are exempt from this chapter.

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(3) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(4) "Waste water treatment plant" means facilities designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters and which serves ten (10) or more families or serves an industry employing ten (10) or more persons.

(5) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and serves ten (10) or more families or serves an industry employing ten (10) or more persons.

(6) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves ten (10) or more families or supplies an industry employing ten (10) or more persons.

(8) "Certificate" means a certificate of competency issued by the department stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(9) "Montana's waters" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

History: Amd. Sec. 85, Ch. 349, L. 1974.

69-5903. Board to assist department—meetings and organization—examination of candidates for certification. (1) The board shall advise and assist the department in the administration of the certification program. The board shall serve as an advisory board to the department in actions relating to the qualifications of water and waste water treatment plant operators.

(2) Annually when new members are appointed to the board a chairman shall be elected at the next board meeting.

(3) The board shall hold at least one (1) examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the department for certification. Additional meetings may be called by the chairman, or on written request of four (4) members of the board when necessary to carry out this chapter. Four (4) members constitute a quorum. The members of the board shall receive a fee of twenty dollars (\$20) per day while in session, plus the cost of actual and necessary expenses, including travel while discharging their official duties.

History: Amd. Sec. 85, Ch. 349, L. 1974.

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within one (1) year from the date of initiation of this program. One (1) of these members is required to hold, or receive within one (1) year from the date of initiation of this program, a certificate by examination of the highest class issued by the board. There is no restriction on the classification of the certificate held by the other operator.

(c) One (1) member presently serving on the faculty of a university or college whose major field is related to water supply systems, waste water treatment, chemical or civil engineering, chemistry or bacteriology.

(d) One (1) member who is a representative of a municipality required to employ a certified operator and who holds a position of either city manager, city engineer, director of public works, works manager, or their equivalent.

(e) The director of the division of environmental sanitation or a qualified member of his staff to be appointed by the director.

(2) Each member of the board, with the exception of the ex officio voting member from the state board of health, shall be appointed for a six (6) year term except in the case of the initial appointments the municipal representative shall be appointed for one (1) year, the faculty member shall be appointed for two (2) years, and the water and waste water operators shall be appointed for three (3), four (4), five (5) and six (6) years setting forth in the appointment the term in the beginning. Vacancies shall be filled by appointment by the governor for the unexpired term. The director shall be the only permanent member of the board.

(3) Members of the first board shall at the call of the director, organize and elect from their number a chairman. Thereafter, annually when new members are appointed to the board a chairman shall be elected at the next board meeting. The director shall be the secretary to the board.

(4) The board shall hold at least one (1) examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the director for certification. Additional meetings may be called by the chairman, secretary, or upon written request of four (4) members of the board as may be reasonably necessary to carry out the provisions of this act. Four (4) members shall constitute a quorum. The members of the board shall receive a fee of twenty dollars (\$20) per day while in session, plus the cost of actual and necessary expenses, including travel while discharging their official duties.

History: En. Sec. 3, Ch. 239, L. 1967.

History: En. Sec. 3, Ch. 239, L. 1967;
amd. Sec. 1, Ch. 306, L. 1971.

Amendments

The 1971 amendment inserted the second sentence, attaching the certification board to the state board of health, in subsection (1).

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(25).

Department of health abolished and functions transferred, secs. 82A-602 (1), 82A-604.

Director of environmental sanitation replaced on board, sec. 82A-1605(3).

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69-5904. Classification of treatment plants and distribution systems. The director shall classify all water treatment plants, water distribution systems and waste water treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of waste waters to be treated and other physical conditions affecting such waste treatment plants and according to the skill, knowledge, and experience that the operator in responsible charge must have, to successfully supervise the operation of such water

treatment plants and water distribution systems and such waste water treatment facilities so as to protect the public health and prevent unlawful pollution.

History: En. Sec. 4, Ch. 239, L. 1967.

69-5905. Certification of operators by director. The director shall certify persons as to their qualifications to supervise successfully the operation of such water and waste water treatment plants and the water distribution systems after considering the recommendations of the board.

History: En. Sec. 5, Ch. 239, L. 1967.

69-5906. Operator of treatment plant or distribution system to be certified—certification of operators certified by other agency. Water and waste water treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or waste water supply system to be supervised. However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and waste water plants and water distribution systems on the effective date of the act. A certificate so issued will be valid only in that plant. The board may consider for recommendation for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state, on presentation to the board of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under section 69-5903(3) and section 69-5905.

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History: Amd. Sec. 87, Ch. 349, L. 1974.

69-5907. Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate. The department shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise. The certificate shall be prominently displayed in the office of the operator.

(1) Certificates continue in effect unless revoked by the department, but remain the property of the department and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

(2) The department may revoke the certificate of an operator following a hearing by the department, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties. A person who has his certificate revoked by the department may appeal to the board for a rehearing within ten (10) days of notification by the department, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final.

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(3) Operators who terminate employment may retain their certificate for two (2) years, providing that all other requirements are met. After two (2) years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of an examination may be required at the discretion of the board.

History: Amd. Sec. 88, Ch. 349, L. 1974.

69-5908. Application for operator's certificate—payment of fee—use of proceeds. A person desiring to engage in the operation of a water treatment plant, water distribution system, or waste water treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee, of the same amount as the license cost set forth in section 69-5909, for the filing of each application and shall not act on an application until the fee has been paid. Filing and certification fees shall be deposited with the state treasurer in the "Board of Water and Waste Water Operators Account" in the department earmarked revenue fund and shall be used to pay the expenses of the board and department.

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under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys. In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

History: Amd. Sec. 89, Ch. 349, L. 1974.

69-5909. Term of operator's certificate—renewal fee—suspension and revocation—reinstatement. Certificates issued under this chapter shall be renewed annually before July 1. After the payment of the initial fee under section 69-5908, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the following schedule:

Class I—twenty dollars (\$20)

Class II—fifteen dollars (\$15)

Class III—ten dollars (\$10)

Class IV—five dollars (\$5)

Class V—three dollars (\$3)

A certificate issued after July 1 expires the following June 30. If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall have his certificate suspended by the board. If the certificate remains suspended for a period of more than thirty (30) days it shall be revoked by the board; however, the board, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least ten (10) days before the time set for action to be taken by the board on the certificate. A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the board that the certificate holder was not guilty of negligence or laches. If a person whose certificate has been revoked through his own fault desires to continue as a water or waste water plant operator, he must make application to the department under section 69-5908. Successful completion of an examination may be required at the discretion of the board. Notice of suspension shall be given to certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

History: Amd. Sec. 90, Ch. 349, L. 1974.

69-5910. Rules of board. The board shall adopt rules necessary to carry out this chapter. Before the rules are effective, they shall be approved by the department. The rules shall include, but are not limited to, provisions establishing the basis for classification of treatment plants under section 69-5901, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this act.

History: Amd. Sec. 91, Ch. 349, L. 1974.

69-5911. Unlawful to operate treatment plant or distribution system without certified operator. It is unlawful for a person, firm, or corpora-

tion both municipal and private, operating a waste water treatment plant, water treatment plant or water distribution system to operate it unless the competency of the operator is certified to by the department under this act. Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this act.

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History: Amd. Sec. 92, Ch. 349, L. 1974.

69-5912. Violation a misdemeanor—each day as separate offense. Any person, firm, or corporation, both municipal and private, violating any provisions of this act or the rules and regulations adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this act or any rules and regulations adopted hereunder shall constitute a separate offense.

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History: En. Sec. 12, Ch. 239, L. 1967.

Separability Clause

Section 13 of Ch. 239, Laws 1967 read
"It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are separable from the invalid applications."

CHAPTER 60

REFUSE DISPOSAL DISTRICTS

- Section 69-6001. Declaration of purpose.
 69-6002. Definitions.
 69-6003. Creation of district authorized—cities and towns included—resolution of intention.
 69-6004. Action by city or town council—effect—notice.
 69-6005. Written protest—hearing—effect.
 69-6006. Jurisdiction to order improvements—passage of resolution—brief description and reference.
 69-6007. Service fees—maintenance assessments—disposal fee.
 69-6008. Installment payments for land and equipment—moneys from fee levy.
 69-6009. Board of directors—composition.
 69-6010. Powers of board.
 69-6011. Changes in boundaries.
 69-6012. Joint districts.
 69-6013. Duty of county attorney—conflict of interest.

69-6001. Declaration of purpose. The improper storage, collection and disposal of refuse is hereby declared to be a significant hazard to the health, safety and welfare of Montana citizens and can cause the spread of disease, air pollution and water pollution. Refuse can be an excellent habitat for disease vectors such as rats and insects; therefore, it is deemed necessary to provide for the creation of refuse disposal districts to control storage, collection and disposal of refuse.

History: En. Sec. 1, Ch. 71, L. 1969.

Refuse disposal areas, secs. 69-4001 to 69-4010.

Cross-References

Air pollution, secs. 69-3904 to 69-3923.

Water pollution, secs. 69-4801 to 69-4819.

69-6002. Definitions. As used in this act unless the context indicates otherwise:

"Commissioners" means the board of county commissioners.

"Family residential unit" means the residence of a single family.

"Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

"Refuse disposal district" means an area established with definite boundaries for the purpose of collecting and disposing of all refuse created in said district.

"Board" means board of directors as provided for in section 69-6009, R. C. M., 1947, and section 4 [69-6012] of this act.

History: En. Sec. 2, Ch. 71, L. 1969; Amendments
 amd. Sec. 1, Ch. 136, L. 1971.

The 1971 amendment added the definition of "board."

69-6003. Creation of district authorized—cities and towns included—resolution of intention. Whenever it becomes necessary, the commissioners may create a refuse disposal district for the purpose of collection and/or disposal of refuse.

Cities and towns may be included in the district if approved by the city and town councils.

Before creating any refuse disposal district, the commissioners shall pass a resolution of intention so to do, which said resolution shall designate:

- (1) the proposed name of such district,
- (2) the necessity for the proposed district,
- (3) a general description of the territory or lands of said district giving the boundaries thereof,

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- (4) the general character of the collection service,
- (5) the estimated cost thereof.

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History: En. Sec. 3, Ch. 71, L. 1969.

69-6004. Action by city or town council—effect—notice. (1) Upon passage of such resolution of intention, the commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur, in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners. If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said town or city in the district, but may continue to develop the district, but excluding said town or city.

(2) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, a notice describing the general characteristics of the collection system and estimated costs; designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district; and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office. The notice shall be published in the newspaper published nearest to the place where the proposed district is to be created for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper; posted in three (3) public places within the boundaries of the proposed district; and a copy mailed by first class mail to every person, firm, or

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corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published.

History: En. Sec. 4, Ch. 71, L. 1969; and rephrased the language in subsection (2); and added at the end of subsection (2) the clause providing for mailing notice to property owners on the assessment list.

Amendments

The 1973 amendment divided the section into numbered subsections; rearranged

69-6005. Written protest—hearing—effect. At any time within thirty (30) days after the date of the first publication of the notice provided in section 69-6004, any owner of property liable to be assessed for said service may make written protest against the proposed service. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the commissioners, after the expiration of the time within [which] such said protest may be so made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed service is made by the owners of more than fifty (50) per cent of the family residential units; each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining per cent of protest; in the proposed district, no further proceedings shall be taken by the commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts, shall be considered the same as any other property in the district. The commissioners may include commercial and industrial establishments in said district. The commissioners may adjourn said hearings from time to time.

History: En. Sec. 5, Ch. 71, L. 1969; and Sec. 2, Ch. 293, L. 1973. tie provided in section 69-6004" for "passage of the resolution of intention" in the first sentence of the first paragraph.

Amendments

The 1973 amendment substituted "no-

69-6006. Jurisdiction to order improvements—passage of resolution—brief description and reference. When no protests have been delivered to the county clerk within thirty (30) days after the date of the first publication of the notice provided in section 69-6004, or when a protest shall have been found by said commissioners to be insufficient, or shall have been overruled, immediately thereupon, the commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the commissioners shall pass a resolution creating the said refuse disposal district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be suffi-

cient to briefly describe the work of the refuse disposal district and to refer to the resolution of intention for further particulars.

History: En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973.

vided in section 69-6004" for "of the passing of the resolution of intention" near the beginning of the first paragraph.

Amendments

The 1973 amendment substituted "pro-

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69-6007. Service fees—maintenance assessments—disposal fee. To defray the cost of maintenance and operation of said refuse disposal district, the board, shall establish a fee for service with approval of the county commissioners. This fee shall be assessed to all units in the district that are receiving a service for the purpose of maintenance and operation of said district. The fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced. In no case shall the fee for disposal service exceed one half ($\frac{1}{2}$) the total fee for both collection and disposal services. The month the service begins the department of revenue or its agents shall ensure that the amount of this fee is placed on the tax notices to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property. All fees and other moneys received by the district shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which said refuse disposal district was created. Warrants upon such funds shall be drawn by the board of county commissioners upon presentation of claims approved by the board. Fees and other moneys collected by joint county refuse disposal districts may be administered by one (1) county treasurer's office upon mutual agreement by the county commissioners of any joint refuse disposal district.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "board" for "commissioners" in the first sentence; added "with approval of the county commissioners" at the end of the first sentence; substituted a new second sentence for a sentence reading "The commissioners shall assess the entire cost of maintenance and operation of said district on each family residential unit that is receiving

this service"; inserted "The fees shall be based upon a family residential unit, and" at the beginning of the third sentence; added the fifth through ninth sentences; and made minor changes in phraseology.

The 1973 amendment substituted "department of revenue or its agents" for "county assessor" in the fifth sentence in order to implement article VIII, section 3 of the 1972 constitution; and substituted "shall ensure that the amount of this fee is placed" in the fifth sentence for "shall place the amount of this fee."

69-6008. Installment payments for land and equipment — moneys from fee levy. To defray the initial cost of purchasing land and equipment, payments may be spread over a term of not to exceed twenty (20) years. Payments are to be made in equal installments out of the moneys received from the fee levy provided for in this act.

History: En. Sec. 8, Ch. 71, L. 1969.

69-6009. Board of directors—composition. Upon creation of any refuse disposal district, the commissioners shall appoint a board of directors for the proposed refuse disposal district. The board shall consist of not less than five (5) members, each of whom shall be property owners in the said district. The board shall consist of one (1) county commissioner, one (1) member from each incorporated city or town that is included in the district, one (1) member of the county or city-county board of health. The rest of the board shall consist of interested citizens distributed equally throughout the district. In those counties where full-time city-county health departments exist, the city-county board of health may be designated as the board of directors for the refuse disposal district.

History: En. Sec. 9, Ch. 71, L. 1969.

69-6010. Powers and duties of board. The board of a refuse disposal district established and organized under this act have the following powers and duties with the approval of the county commissioners of the counties involved:

(1) To develop and administer a program for the collection or disposal of refuse in the district.

(2) To employ personnel.

(3) To purchase, rent, or execute leasing agreements for such equipment and material necessary for carrying on an effective refuse collection or disposal program.

(4) To co-operate with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to carry out effective programs.

(5) To receive gifts, grants, or donations for the purpose of advancing the program: to acquire by gift, deed, purchase, or condemnation land necessary for refuse disposal purposes.

(6) To enforce department of health and environmental sciences or local board of health rules pertaining to the storage, collection, and disposal of refuse.

(7) To apply for and receive from the federal government or the state government on behalf of the refuse disposal district moneys appropriated by federal or state legislative bodies for aiding these programs.

(8) To borrow from any loaning agency funds available for assistance in planning or financing a refuse disposal district and repay these with the moneys received from the fees levied under this act.

(9) The board may implement its proposed program a section at a time. If a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service.

History: Amd. Sec. 93, Ch. 349, L. 1974.

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69-6011. Changes in boundaries. The governing body of the district may by resolution make such changes in the boundaries of said district as they shall deem reasonable and proper, following the same procedures of notice and hearings outlined under section 69-6006.

History: En. Sec. 11, Ch. 71, L. 1969.

69-6012. Joint districts. Joint refuse disposal districts are districts which encompass two (2) or more counties or parts thereof. A joint refuse disposal district may be created in the following manner: The commissioners of each county affected will create the district following the procedure as prescribed under sections 69-6003, 69-6004, 69-6005, and 69-6006, R. C. M., 1947. The commissioners shall appoint a joint board of directors composed of at least five (5) members, each of whom shall be property owners in the said district. The board of directors for a joint district will consist of one (1) commissioner from each county involved, one (1) member from each of the incorporated cities or towns that are included in the district, and one (1) member from each of the county or city-county boards of health. The rest of the joint board of directors shall consist of interested citizens distributed equally throughout the district, and the appointments shall be acceptable to all groups of county commissioners.

History: En. Sec. 4, Ch. 136, L. 1971.

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69-6013. Duty of county attorney—conflict of interest. The county attorney shall be the legal adviser of the refuse disposal districts and boards within the county of his jurisdiction and shall prosecute and defend all suits to which the districts may be a party. A district or board may employ special legal counsel to defend any such suits in the event a conflict of interest would prohibit such defense by county attorney.

History: En. Sec. 5, Ch. 136, L. 1971; amend. Sec. 1, Ch. 179, L. 1973.

Amendments

The 1973 amendment added the second sentence.

Repealing Clause

Section 6 of Ch. 136, Laws 1971 read "Section 16-1031, R. C. M., 1947, is repealed."

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CHAPTER 99

EMINENT DOMAIN

- 93-9901. Eminent domain defined.
- 93-9902. What are public uses.
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- 93-9940. Expenses included in inverse condemnation judgment or settlement.
- 93-9941. Acquisition of buildings and improvements affected—payments to tenant.
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- 93-9943. New rights and powers not created.
- 93-9944. Application to all federally assisted programs.

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93-9901. (9933) Eminent domain defined. Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

History: En. Sec. 579, p. 189, L. 1877; re-en. Sec. 579, 1st Div. Rev. Stat. 1879; re-en. Sec. 597, 1st Div. Comp. Stat. 1887; amd. Sec. 2210, C. Civ. Proc. 1895; re-en. Sec. 7230, Rev. C. 1907; re-en. Sec. 9933, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1237.

Special Proceedings

Condemnation proceedings are special proceedings provided for by the statute. State ex rel. Davis v. District Court, 29 M. 153, 155, 74 P. 200.

Strict Compliance Required

The right to take private property from its owner against his will can be invoked only pursuant to law; authority for the exercise of such right must be clearly

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, M. R. Civ. P., Rule 81(a) and Table A.

expressed in the law before it will be allowed, and when the right is sought to be exercised the provisions of the law must be rigorously complied with. *State ex rel. McMaster v. District Court*, 80 M 228, 260 P 134; *State v. Aitchison*, 96 M 335, 341, 30 P 2d 505.

The jurisdiction of courts over eminent domain proceedings is wholly statutory; the due process of law clause, in addition to its requirement of public use and just compensation, protecting the landowner from the adoption of any form of procedure which deprives him of a reasonable opportunity to be heard. The provisions of the law granting the right of eminent domain must be complied with. *Housing Authority v. Bjork*, 109 M 552, 556, 98 P 2d 324.

References

Montana Central Ry. Co. v. Helena & R. M. R. Co., 6 M 416, 12 P 916; *School District No. 1 v. Powers*, 62 M 151, 204 P 598; *In re Valley Center Drain District*, 64 M 545, 211 P 218; *State ex rel. McLeod v. District Court*, 67 M 164, 168, 215 P 240; *Komposh v. Powers*, 75 M 493, 499, 244 P 298; *State ex rel. Livingston v. District Court*, 90 M 191, 195, 300 P 916; *State v. Peterson*, 124 M 52, 228 P 2d 617, 627.

Collateral References

Eminent Domain—1 et seq.
29 C.J.S. Eminent Domain §§ 1, 2.

18 Am. Jur. 631, Eminent Domain, § 2.

Scope and import of term "owner" in statutes relating to condemnation proceedings. 2 ALR 785.

Wife as necessary party to proceeding to condemn husband's real property. 5 ALR 1347 and 101 ALR 697.

Condemnation by de facto corporation. 44 ALR 542.

Protection of rights of mortgagee in eminent domain proceedings. 58 ALR 1534; 110 ALR 542 and 151 ALR 1110.

Domestic corporation's right to exercise power of eminent domain as affected by benefit to foreign corporation. 65 ALR 1457.

Constitutionality of provisions as to tribunal which shall fix amount of compensation for taking of property in eminent domain, otherwise than objections that a trial by jury is necessary. 74 ALR 569.

Jurisdiction of justice of the peace of condemnation proceedings and actions relating thereto. 115 ALR 538.

Deduction of benefits in determining compensation or damages in eminent domain. 145 ALR 7.

Increment to value, from projects for which land is condemned, as a factor in fixing compensation. 147 ALR 66.

Mensura of compensation in eminent domain to be paid to state or municipality for taking of public highway or street. 160 ALR 955.

93-9902. (9934) What are public uses. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.
2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.
3. Public buildings and grounds for the use of any county, city, or town, or school districts; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, city, or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water. Provided, however, that such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water. Provided, however, that such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

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6. Private roads leading from highways to residences or farms.
7. Telephone or electric light lines.
8. Telegraph lines.
9. Sewerage of any city, county, or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten (10) families, or of any public buildings belonging to the state, or to any college or university.
10. Tramway lines.
11. Electric power lines.
12. Logging railways.
13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways, for such time as the court or judge may determine; provided, the grounds of state institutions be excepted.

14. Underground reservoirs suitable for storage of natural gas.

15. To mine and extract ores, metals or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others; provided, however, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use and eminent domain may not be exercised for this purpose.

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History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 593, 1st Div. Rev. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R. C. M. 1921; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973. Cal. C. Civ. Proc. Sec. 1238.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 590, 1st Div. Rev. Stat. 1879; re-en. Sec. 593, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R. C. M. 1921; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961. Cal. C. Civ. Proc. Sec. 1238.

Cross-References

Airports, establishment, sec. 1-801 et seq.

Airport zoning, sec. 1-721.

Carey Land Act board, sec. 81-2120.

Cemetery associations, sec. 9-104.

Cities for water supply, sec. 11-966.

Corporations, right to exercise, sec. 15-810.

Ferries, condemnation of land for, sec. 32-1515.

Foreign corporations, right to exercise, sec. 15-1708.

Housing authorities, sec. 35-111.

Electric Power

Legislature has specifically declared that an electric power line is public use for which private property may be taken by eminent domain proceedings under this section, and public use is not confined to actual use by public, but is measured in terms of right of public to use proposed facilities for which condemnation is sought. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

Mining claims, right of way, sec. 50-801 et seq.

Pipelines, right of way, sec. 8-203.

Railroad companies, sec. 72-205.

State aeronautics commission may exercise, sec. 1-401.

State highway commission may exercise, sec. 32-1615.

State, right of eminent domain, sec. 67-104.

Telegraph and telephone companies, sec. 70-302.

United States, right for ditches, sec. 89-845.

Electric Power

The taking of land for the purpose of flooding it, rendered necessary by the construction of a dam for generating electric power, to be sold to industrial enterprises and to the public generally, the power also to be utilized for pumping water upon arid lands, is for such public use as will support the right to acquire the land by

condemnation. *Helena Power Transmission Co. v. Spratt*, 33 M 108, 125, 88 P 773.

A power plant is one of the public uses for which land may be condemned; and the complaint, in a proceeding for the purpose, need not allege a promise of accomplishment in respect to the use, but only that the plaintiff is one of the agencies chosen by the state to exercise the power of eminent domain, and that the use for which the property is to be taken is one of the public uses enumerated in the statute. *Interstate Power Co. v. Anaconda Copper Min. Co.*, 52 M 509, 515, 159 P 408.

Where plaintiff electric power company, in a condemnation proceeding, alleged sufficient facts to show that the use sought to be made of the land was a public one, it was not necessary to specifically allege that there was a present or prospective demand for its products. *Interstate Power Co. v. Anaconda Copper Min. Co.*, 52 M 509, 515, 159 P 408.

Express Business

A domestic corporation engaged in the express business is not authorized to invoke the power of eminent domain to any greater extent than a private individual, and the power is not open to the one for any purpose for which it is not open to the other. *Wells Fargo & Co. v. Harrington*, 54 M 235, 241, 169 P 463.

Legislation for Private Use

The taking of private property for the private use of another violates the fourteenth amendment to the federal constitution, and the legislature has not the power to declare that that which is in truth a private use shall be a public one, the question whether a particular use is a private or public one being determinable by the courts. *Komposh v. Powers*, 75 M 493, 499, 502, 244 P 298.

Mining Use

Subdivision 5 of this section was designed to favor the mining industry of the state. *Kipp v. Davis-Daly Copper Co.*, 41 M 509, 519, 110 P 237.

The aid of eminent domain granted by this section to operators of mining property is extended to the industry of mining, not to the individual, and necessity must be shown to obtain exclusive control, and that contemplated use is more important public use than that for which the owner could lawfully use it. *State ex rel. Butte-Los Angeles Min. Co. v. District Court*, 103 M 30, 36, 60 P 2d 380.

Necessity of Use Required

Complainant must allege the necessity of the use for which the condemnation is

sought. *City of Helena v. Harvey*, 6 M 114, 9 P 993.

References

State ex rel. Bloomington Land & Live Stock Co. v. District Court, 34 M 533, 541, 88 P 44; *Northern Pacific Ry. Co. v. McAdow*, 44 M 547, 552, 121 P 473; *City of Butte v. Montana Independent Tel. Co.*, 50 M 574, 580, 143 P 384; *State ex rel. McLeod v. District Court*, 67 M 164, 168, 215 P 240; *State ex rel. Livingston v. District Court*, 90 M 191, 195, 300 P 916; *State v. Aitchison*, 96 M 335, 341, 30 P 2d 805; *State ex rel. Butte-Los Angeles Min. Co. v. District Court*, 103 M 30, 41, 60 P 2d 380; *Coeanougher v. Zeigler*, 112 M 76, 82, 112 P 2d 1058; *Tomten v. Thomas*, 125 M 159, 232 P 2d 723, 724, 725, 26 ALR 2d 1285; *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

Collateral References

Eminent Domain—12-52.
29 C.J.S. Eminent Domain § 29 et seq.
18 Am. Jur. 660, Eminent Domain, §§ 36-45.

Exercise of eminent domain for purpose of library. 66 ALR 1496.

Exercise of eminent domain for purpose of logging road. 86 ALR 352.

Exercise of eminent domain for purposes of airport. 135 ALR 755.

Damage to private property caused by negligence of governmental agents as "taking," "damago" or "use" for public purposes in constitutional sense. 2 ALR 2d 707.

Off-street public parking facilities. 6 ALR 2d 394.

Constitutionality of reforestation or forest conservation legislation. 13 ALR 2d 1095.

Condemnation of another railroad's property for purposes of spur track and the like. 35 ALR 2d 1340.

Condemner's acquisition of, or right to, minerals under land in eminent domain for highway purposes. 36 ALR 2d 1425.

Compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, as taking private property for private use. 37 ALR 2d 439.

Power to condemn abutting owner's right of access to limited access highway or street. 43 ALR 2d 1073.

Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise. 44 ALR 2d 1414.

Municipal power to condemn land for cemetery. 54 ALR 2d 1322.

Public school, amount of property which may be condemned for. 71 ALR 2d 1071.

Liability of public schools and institutions of higher learning for taking or damaging property for public use. 86 ALR 2d 600.

93-9902.1. Policy on surface mining or open pit mining of coal. For the following reasons the state's power of eminent domain may not be exercised to mine and extract coal owned by the plaintiff located beneath the surface of property where the title to the surface is vested in others:

(1) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals, and affecting large areas of land and large numbers of people;

(2) That in many areas of Montana set forth in (a) hereinabove, the title to the surface is vested in an owner other than the mineral owner, and that the surface owner is putting that surface to a productive use, and it is the public policy of the state to encourage and foster such productive use by such owner, and that to permit the mineral owner to condemn the surface owner is to deprive the surface owner of the right to use his property in a productive manner as he determines, and is also contrary to public policy as set forth in paragraph four (4) herein below;

(3) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain;

(4) That it is the public policy of the state to encourage and foster diversity of land ownership and that the surface mining of coal and control of large areas of land by the surface coal mining industry would not foster public policy and further the public interest.

History: En. 93-9902.1 by Sec. 2, Ch. 311, L. 1973.

Title of Act

An act amending section 93-9902,

R. C. M. 1947, to declare that the extraction of coal by strip mining or open pit mining is not a public use; and setting forth the public policy therefor.

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93-9903. (9935) What estates in lands may be acquired by condemnation. The following is a classification of the estates and rights in lands subject to be taken for the public use:

1. Such estate or rights as may be necessary up to and including a fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs or dams and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine, or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others, or for the underground storage of natural gas by a natural gas public utility as defined in this act. When the appropriation is for the underground storage of natural gas, all of the right, title, interest and estate in the real property and in the subsand stratum, formation or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of one year of the use for which the same was appropriated and thereupon, the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of land, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

History: En. Sec. 581, p. 190, L. 1877; re-en. Sec. 581, 1st Div. Rev. Stat. 1879; re-en. Sec. 599, 1st Div. Comp. Stat. 1887; re-en. Sec. 2212, C. Civ. Proc. 1895; re-en. Sec. 7332, Rev. C. 1907; re-en. Sec. 9935, E. C. M. 1921; amd. Sec. 1, Ch. 158, L. 1913; amd. Sec. 2, Ch. 215, L. 1953; amd. Sec. 7, Ch. 259, L. 1955; amd. Sec. 2, Ch. 216, L. 1961. Cal. C. Civ. Proc. Sec. 1239.

References

State ex rel. Galen v. District Court, 42 M 105, 114, 112 P 706.

Collateral References

Eminent Domain 44-52.
29 C.J.S. Eminent Domain § 65 et seq.
18 Am. Jur. 712, Eminent Domain, § 82 et seq.

Title or interest acquired by railroad in exercise of eminent domain as fee or easement. 155 ALR 381.

93-9903.1. Appropriation of underground natural gas reservoir—effect on landowner's right to drill. The appropriation of any sand, stratum or formation for use as an underground natural gas storage reservoir shall be without prejudice to the rights of the owner or owners of said lands, or of the oil, gas or other mineral rights therein, to drill or bore through the sand, stratum or formation so appropriated for use as an underground natural gas storage reservoir, in order to explore for, produce, process, treat or market any oil, gas or other minerals that might be contained in said lands above or below the sands, stratum or formation so appropriated. Any additional cost or expense required to be incurred in order to protect the underground gas storage reservoir against pollution and the escape of the gas therefrom, by reason of such boring or drilling through of the sand, stratum or formation used as such underground gas storage reservoir shall be paid by the persons, firm or corporation then owning such underground gas storage reservoir.

History: En. Sec. 5, Ch. 245, L. 1953.

Collateral References

Condemner's acquisition of, or right to, minerals under land taken in eminent domain. 36 ALR 2d 1424.

93-9904. (9936) Private property defined — classes enumerated. The private property which may be taken under this chapter includes:

1. All real property belonging to any person;
2. Lands belonging to this state, or to any county, city, or town, not appropriated to some public use;
3. Property appropriated to public use; but such property must not be taken unless for a more necessary public use than that to which it has already been appropriated;
4. Franchises for roads, bridges, and ferries, and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads, or other more necessary public use;
5. All rights of way for any and all the purposes mentioned in section 93-9902, and any and all structures and improvements thereon, and the lands held and used in connection therewith must be subject to be connected with, crossed, or intersected by any other right of way of improvements, or structures thereon. They must also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections, and connections must be made in manner most compatible with the greatest public benefit and least private injury;
6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

History: En. Sec. 582, p. 190, L. 1877; re-en. Sec. 582, 1st Div. Rev. Stat. 1879; re-en. Sec. 600, 1st Div. Comp. Stat. 1887; amd. Sec. 2213, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9556, B. C. M. 1921. Cal. C. Civ. Proc. Sec. 1240.

Cemetery Land

Land owned by a cemetery association organized for profit is private property, which under this section, may be taken by eminent domain for public cemetery purposes. *Forestvale Cemetery Assn. v. Helena Cemetery Assn.*, 62 M 52, 57, 203 P 359.

Under the rule that a public corporation may by condemnation take property of an individual or a private corporation used for the same public purpose as that for which it is sought to be condemned, unsold lots of a cemetery association whose corporate existence had expired and ninety-nine per cent of whose stock was held by one individual, could properly be acquired by eminent domain by a corporation for public cemetery purposes. *Forestvale Cemetery Assn. v. Helena Cemetery Assn.*, 62 M 52, 57, 203 P 359.

Authorized to condemn land for relocating highways, and even assuming that the taking of an existing highway is justified as a more necessary public use where the purpose is to build a dam and a reservoir, yet the public utility building the dam cannot acquire land for relocating the highway since that function is exclusively within the power of the highway commission. *State ex rel. Bartholomew v. District Court*, 126 M 183, 248 P 2d 215, 216.

State Lands

Lands belonging to the state, except as otherwise indicated in subdivision 2 of this section, may be taken by the exercise of the power of eminent domain, and the state may properly be made a party to the action; in other words, the state has expressly consented to be sued under such circumstances. *State ex rel. Galen v. District Court*, 42 M 105, 112, 116, 112 P 706.

Lands granted to the state for common school purposes cannot be taken under condemnation proceedings. Congress commanded that sections 16 and 36 in each township should be sold at public sale, and the framers of the state constitution expressly agreed, for the state, not to dispose of them, except in the manner pre-

More Necessary Public Use

Under subdivision 3 it is necessary to show that plaintiff's use for which it asks that defendant's portion of a tunnel be condemned is a more necessary public use than that for which it is employed by the defendant. *State ex rel. Butte-Los Angeles Min. Co. v. District Court*, 103 M 30, 39, 60 P 2d 380.

The provision prohibiting the taking of property except for a more necessary public use does not apply in an action to condemn a right of way through an irrigation ditch for the purpose of conveying water to irrigate plaintiff's adjoining land, where the joint use will not interfere with use by the owner after enlargement by plaintiff; the legislature in requiring "a more necessary public use" evidently meant a use that would destroy the prior one, dispossess the owner and deprive him of its use altogether. Mere inconvenience or compensable damage is not sufficient to deny the relief. *Cocanougher v. Zeigler*, 112 M 76, 79, 112 P 2d 1058.

Relocation of Highway

Under section 32-1615 the state highway commission is the only tribunal au-

thorized to condemn land for relocating highways, and even assuming that the taking of an existing highway is justified as a more necessary public use where the purpose is to build a dam and a reservoir, yet the public utility building the dam cannot acquire land for relocating the highway since that function is exclusively within the power of the highway commission. *State ex rel. Bartholomew v. District Court*, 126 M 183, 248 P 2d 215, 216.

Water Rights

A beneficial use of the water flowing in the streams of the state is a public use; but it may be appropriated to a more necessary public use, and it is not necessary that the new public use should, in all cases, be a different public use. It does not follow, however, that a city can acquire the exclusive right to the use of the water in a particular stream; it must first be shown that the use for which it is sought is a more necessary use, and the city must then be able financially to make compensation to the person or persons entitled to the present use. *Carlson v. City of Helena*, 39 M 82, 105, 102 P 39.

References

Tomten v. Thomas, 135 M 139, 232 P 2d 723, 724, 26 ALR 2d 1285; *Cove Irrigation Co. v. Yellowstone Ditch Co.*, 139 M 281, 362 P 2d 513, 514.

Collateral References

Right to condemn property previously condemned or purchased for public use, but not actually so used. 12 ALR 1502.

93-9905. (9937) Facts necessary to be found before condemnation. Before property can be taken, it must appear:

1. That the use to which it is to be applied is a use authorized by law.
2. That the taking is necessary to such use.
3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use. The plaintiff or defendant, or any party interested in the proceedings, can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases. Such appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for such period of time and under such conditions as the court deems proper.

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History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 1241.

Advisory Committee's Note

Subdivision (f) Rule 41, M. R. App. Civ. P., amends the provision of subdivision 3 of this section to permit the district court to stay proceedings on appeals in eminent domain cases, as is permitted by Rule 7(a) of these rules in other cases. See Tables A, B, C, M. R. App. Civ. P. for reference to other amendments.

Amendments

The 1965 amendment added the exception at the end of the section.

Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, while the commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway and that their decision appeared to be compatible with the greatest public good and least private injury on the basis of conflicting evidence. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1241.

Appeal

This section and sections 93-9918 to 93-9920, authorizing an appeal by plaintiff after payment of the judgment into court for defendant and after securing possession of the land, do not contravene section 14, article III, of the state constitution prohibiting the taking of private property for public use without paying just compensation therefor. State v. Bradshaw Land & Live Stock Co., 99 M 95, 43 P 2d 674.

Since this section allows appeals from any finding or judgment made or rendered

Condemnor's Discretion

Highway commission did not abuse its discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283, distinguished in State Highway Commission v. Daniels, 146 M 539, 409 P 2d 443; 155 M 39, 47, 466 P 2d 594.

Necessity of Use

The word "necessary" as used in this section does not mean that the property must be indispensable to the proposed project, but that it must be reasonably requisite and proper for the accomplishment of the purpose for which it is sought under the peculiar circumstances of each case. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

Before district court may order condemnation, this section requires that it must find that proposed taking is necessary to public use under circumstances of individual case. Montana Power Co. v. Bokma, 153 M 390, 457 P 2d 769.

References

State Highway Commission v. Daniels, 146 M 539, 409 P 2d 443.

under this chapter, as in other cases and section 93-8003 allows appeals from final judgments or orders, an appeal does not lie from the court's finding of fact or conclusions of law. Sheridan County Elec. Co-op. v. Anhalt, 127 M 71, 257 P 2d 889.

Certiorari

The provision authorizing any party to appeal to the supreme court from any findings or judgment, as in other cases, precludes a resort to certiorari. State ex rel. Davis v. District Court, 29 M 153, 156, 74 P 200, distinguished in 127 M 71, 257 P 2d 889.

Federal Condemnation

In proceeding by federal government in federal court to condemn land located in Montana, Montana statute requiring finding that taking was necessary did not re-

late to "forms and methods of procedure" required to be followed by federal court, but was a rule of "substantive law" which was not controlling, and federal statute which made question depend solely on opinion of federal officer was controlling. *United States v. State of Montana*, 134 F 2d 194, 197.

More Necessary Public Use

Where a railroad, which traverses the side of a mountain in a mining section, has within its right of way tracts not necessary to the operation of its system and which have not been used by it in connection with any such operations, and in all reasonable probability are not necessary for any future use, and another road is obliged to take parts of such unused right of way to avoid a considerably more circuitous route at a different grade, at very much greater cost and of serious damage to many mining properties, and would, in any event, be obliged to parallel the adversary road a part of the way, under such conditions the taking of the unused parts of the one railroad by the other is a more necessary public use. *Butte, Anaconda & Pacific Ry. Co. v. Montana Union Ry. Co.*, 16 M 504, 538, 41 P 232.

Water appropriated for irrigation purposes may be condemned to procure a water supply, where the use for which it is to be taken is more necessary than the existing use, and a complaint in proceedings to condemn for a city water supply water already appropriated to a public use must allege this latter fact, the relative degrees of necessity being a question for judicial determination. *City of Helena v. Rogan*, 26 M 452, 476, 63 P 798.

Necessity of Use

The necessity of the taking or using the roadbed or right of way, built or secured by another railroad company through a canyon or defile, is a question for decision by the district court of the county in which the canyon is located. *Montana Central Ry. Co. v. Helena & R. M. R. Co.*, 6 M 416, 418, 12 P 916.

The word "necessary," as used in a statute of this character, does not mean an absolute necessity for the particular location sought, but a reasonable necessity to be determined from the considerations of practicability, economy, and facilities, under the particular circumstances of the case, having regard to senior rights and the benefits to the public. *Butte, Anaconda & Pacific Ry. Co. v. Montana Union Ry. Co.*, 16 M 504, 538, 41 P 232.

The word "necessary" does not mean an absolute or indispensable necessity, but one reasonable, requisite, and proper for the accomplishment of the end in view, under the peculiar circumstances of the

case. *Butte, Anaconda & Pacific Ry. Co. v. Montana Union Ry. Co.*, 16 M 504, 541, 41 P 232; *Northern Pacific Ry. Co. v. McAdow*, 44 M 547, 554, 121 P 473.

The provisions of sections 15-810, 72-201 and 72-203, are exceedingly liberal in bestowing upon railroad corporations the power to appropriate the property of the citizen to carry forward the public service; but they must, nevertheless, be interpreted in the light of this section, and the rule of necessity must be determinative in each instance. *Northern Pacific Ry. Co. v. McAdow*, 44 M 547, 555, 121 P 473.

In condemnation proceedings instituted by a mutual irrigation company, insolvency of plaintiff, which had acquired canal of defendant mutual irrigation company by contract containing covenants, as consideration for conveyance, under which it obligated itself to furnish defendant company and its users with the same amount of water they had been receiving, was not a "good cause" or "necessity" for condemnation of such covenants by plaintiff. *Cove Irrigation Co. v. Yellowstone Ditch Co.*, 139 M 281, 362 P 2d 543, 545.

In an action by the state to condemn land for interstate highway or controlled access facility the trial judge has the power to determine the public necessity of the proposed highway or facility. *State v. Yost Farm Co.*, — M —, 384 P 2d 277, 281.

Necessity was properly denied where trial court found that proposed highway would not benefit the people living in its vicinity, nor the public in general, and that the construction of the road was not in the public interest. *State v. Yost Farm Co.*, — M —, 384 P 2d 277, 282.

Under this section and section 93-9911 the trial judge not only has the power to determine the question of necessity, but has been directed to make a finding that the public interest requires the taking of the lands before he has power to issue an order of condemnation. *State v. Yost Farm Co.*, — M —, 384 P 2d 277, 279.

Trial judge had authority to deny necessity in action by state to condemn land for interstate highway or controlled access facility. *State v. Yost Farm Co.*, — M —, 384 P 2d 277, 280.

References

State ex rel. McLeod v. District Court, 67 M 164, 166, 168, 215 P 210; *Park County v. Miller*, 117 M 157, 158, 159 P 2d 353; *Tonten v. Thomas*, 125 M 159, 232 P 2d 723, 724, 26 ALR 2d 1285.

Collateral References

Eminent Domain §§ 65-69, 196, 198.
29 C.J.S. *Eminent Domain* §§ 30, 88, 90-92, 269.
18 Am. Jur. 731, *Eminent Domain*, § 10; et seq.

93-9906. (9938) Parties may make location—may enter to make surveys. In all cases where land is required for public use, the state, or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of section 93-9911. The state, or its agents in charge of such public use, may enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except from injuries resulting from negligence, wantonness, or malice.

History: En. Sec. 584, p. 191, L. 1877; re-en. Sec. 584, 1st Div. Rev. Stat. 1879; re-en. Sec. 602, 1st Div. Comp. Stat. 1887; re-en. Sec. 2215, C. Civ. Proc. 1895; re-en. Sec. 7335, Rev. C. 1907; re-en. Sec. 9938, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1242.

Trespass by Public Agency

In taking, by a proper proceeding, the land of a private individual for a public use, the greatest possible good to the public and the least possible harm to the individual are alone to be considered; but

where the taking is by a naked trespass, the individual can say to the trespasser: "You have no right whatever on my property." Postal Telegraph-Cable Co. v. Nolan, 53 M 129, 137, 162 P 169.

References

State ex rel. Livingston v. District Court, 90 M 191, 195, 300 P 916.

Collateral References

Eminent Domain \Rightarrow 186, 187.
29 C.J.S. Eminent Domain §§ 221, 226.

93-9907. (9939) Jurisdiction in district court. All proceedings under this chapter must be brought in the district court of the county in which the property, or some part thereof, is situated. They must be commenced by filing a complaint and issuing a summons thereon.

History: En. Sec. 585, p. 191, L. 1877; re-en. Sec. 585, 1st Div. Rev. Stat. 1879; re-en. Sec. 603, 1st Div. Comp. Stat. 1887; re-en. Sec. 2216, C. Civ. Proc. 1895; re-en. Sec. 7336, Rev. C. 1907; re-en. Sec. 9939, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1937. Cal. C. Civ. Proc. Sec. 1243.

brought and tried in the county in which the land is situated, though the water is to be taken in another county. City of Helena v. Hogan, 26 M 452, 476, 473, 63 P 798.

References

City of Helena v. Harvey, 6 M 114, 118, 9 P 903; Montana Central Ry. Co. v. Helena & R. M. R. Co., 6 M 416, 418, 12 P 916; Yellowstone Park R. Co. v. Bridger Coal Co., 34 M 545, 551, 87 P 963.

Collateral References

Eminent Domain \Rightarrow 172, 180, 191 (1).
29 C.J.S. Eminent Domain §§ 232, 242, 243, 252-254, 261.

Venue of Trial

The provision of this section, that condemnation proceedings must be brought in the county where the land is situated, implies that they must also be tried there, unless transferred by the court or judge in some manner authorized by law. State ex rel. Davis v. District Court, 29 M 153, 155, 74 P 200.

Jurisdiction of justice of the peace of condemnation proceedings and actions relating thereto. 115 ALR 538.

Water Rights

Proceedings to condemn water appropriated for irrigation purposes may be

93-9908. (9940) The complaint and its contents. The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.
2. The names of all owners, mortgagees and lien holders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants.
3. A statement of the right of plaintiff.
4. If a right of way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.
5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a settlement, or town, or a county, the county commissioners of the county may be named as plaintiff.

6. If a sand, stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in section 60-804.

History: Amd. Sec. 206, Ch. 253, L. 1974.

History: Ed. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R. C. M. 1921; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955. Cal. C. Civ. Proc. Sec. 1244.

Access to Property Condemned

A complaint by a city for the condemnation of water rights in a stream for a water supply is not defective for failing to allege that it has a right of way to the stream, or will be able to acquire such right. *City of Helena v. Rogan*, 26 M 452, 470, 473, 68 P 798.

Default by Defendant

Where plaintiff railroad company failed to take default against defendants, who had not answered or demurred, but permitted the case to proceed as if pleadings had been filed and issues properly made, and found no fault with any of the proceedings until hearing in the district court, it will be presumed that issues were made and properly determined. *Yellowstone Park R. Co. v. Bridger Coal Co.*, 34 M 545, 555, 87 P 963.

Description of Land 1974 SUPPLEMENT

Where the complaint, in a proceeding to condemn land, sets forth definitely the bounds on three sides of a tract sought to be taken, and designates a well-known navigable stream as the boundary on the fourth side, this designation is sufficient without express reference to high or low watermark; in any event, it meets the requirements of the rule that "that is certain which can be made certain by means of the description or references contained in the petition." *Interstate Power Co. v. Anaconda Copper Min. Co.*, 52 M 509, 513, 514, 159 P 408.

The area of the land sought to be acquired by condemnation proceedings is not required to be stated in the petition. The requirement of the statute is met when the description is definite enough to identify the land sought to be taken, even though it be conceded that the statement of the area would materially aid in its identification. *Interstate Power Co. v. Anaconda Copper Min. Co.*, 52 M 509, 513, 514, 159 P 408.

Description of lands sought to be condemned for a private road is sufficient if it is definite enough to identify the lands.

Komposh v. Powers, 75 M 493, 506, 244 P 298.

Complaint describing three parcels of land by metes and bounds and alleging that only a portion thereof was desired, was sufficient, as against the contention that it did not appear that plaintiff commission intended to use a considerable portion of a given piece of land. *State v. Whitcomb*, 94 M 415, 425, 22 P 2d 823.

Necessity of Use

To condemn private land for an alleyway, the complainant must allege the necessity of the use for which the condemnation is sought; otherwise, evidence of such necessity is inadmissible. *City of Helena v. Harvey*, 6 M 114, 118, 9 P 993. See

also *City of Helena v. Rogan*, 26 M 452, 476, 68 P 798.

References

Housing Authority v. Bjork, 109 M 552, 555, 98 P 2d 324.

Collateral References

Eminent Domain \hookrightarrow 191.

29 C.J.S. Eminent Domain § 250 et seq.

18 Am. Jur. 968, Eminent Domain, §§ 324, 325.

Propriety of pleading of promissory statements of condemner as to character and use or undertakings to be performed by it. 7 ALR 2d 381.

93-9909. (9941) Summons, what to contain—how issued and served. The clerk must issue a summons, which must contain the names of the parties, a description of the lands and other property proposed to be taken, a statement of the public use for which it is sought, and a notice to the defendants to file and serve upon the plaintiff an answer within fifteen (15) days from date of service of summons and to appear before the court or judge, at a time and place therein specified, and show cause why the property described should not be condemned as prayed for in the complaint. Such summons must, in other particulars, be in form of a summons in a civil action, and must be served in like manner upon each defendant named therein, at least twenty (20) days previous to the time designated in such notice for the hearing. A copy of the complaint must be served, with the summons, upon each defendant named. But the failure to make such service upon a defendant does not affect the right to proceed against any or all other of the defendants, upon whom service of summons had been made.

History: En. Sec. 537, p. 192, L. 1877; re-en. Sec. 587, 1st Div. Rev. Stat. 1879; and. Sec. 605, 1st Div. Comp. Stat. 1887; and. Sec. 2218, C. Civ. Proc. 1895; re-en. Sec. 7338, Rev. C. 1907; re-en. Sec. 9941, R. C. M. 1921; and. Sec. 9, Ch. 259, L. 1955; and. Sec. 1, Ch. 234, L. 1961. Cal. C. Civ. Proc. Sec. 1245.

References

Yellowstone Park R. Co. v. Bridger Coal

Co., 34 M 545, 553, 87 P 963; *Housing Authority v. Bjork*, 109 M 552, 555, 98 P 2d 324.

Collateral References

Eminent Domain \hookrightarrow 179-184.

29 C.J.S. Eminent Domain §§ 242-246, 248.

18 Am. Jur. 965, Eminent Domain, §§ 322, 323.

93-9910. (9942) Who may defend—answer of defendant. All persons named in the complaint, in occupation of, or claiming an interest in, any of the property described in the complaint, or in the amount to be awarded for the taking thereof, though not named, may appear. The answer of each appearing defendant must be filed and served upon the plaintiff, or upon any attorney for plaintiff, within a period of fifteen (15) days after the service of summons and complaint. The answer of each appearing defendant must contain a specific allegation as to the total amount which such defendant claims is reasonable and just for the taking of such defendant's lands or other real property or interest therein.

History: En. Sec. 538, p. 192, L. 1877; re-en. Sec. 543, 1st Div. Rev. Stat. 1879; re-en. Sec. 606, 1st Div. Comp. Stat. 1887; amd. Sec. 2219, C. Civ. Proc. 1895; re-en. Sec. 7339, Rev. C. 1907; re-en. Sec. 9942, R. C. M. 1931; amd. Sec. 2, Ch. 234, L. 1961. Cal. C. Civ. Proc. Sec. 1248.

References

Yellowstone Park R. Co. v. Bridger Coal Co., 34 M 545, 554, 87 P 963; Housing Authority v. Bjork, 109 M 552, 555, 98 P 2d 324.

Collateral References

Eminent Domain—177, 178.
29 C.J.S. Eminent Domain §§ 234, 236, 237, 238.
18 Am. Jur. 964, Eminent Domain, § 321.

Right of adjoining landowners to intervene in condemnation proceedings on ground that they might suffer consequential damages. 61 ALR 2d 1292.

93-9911. (9943) Power of court—preliminary condemnation order. The court or judge has power:

1. To regulate and determine the place and manner of making the connections and crossings, and enjoying the common uses mentioned in subdivision 5, section 93-9904, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

2. To determine whether or not the use for which the property is sought to be appropriated is a public use, within the meaning of the laws of this state;

3. To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary;

4. If the court or judge is satisfied, from the evidence presented at the hearing provided for in section 93-9909, that the public interests require the taking of such lands, and that the facts necessary to be found before condemnation appear, it or he must forthwith make and enter a preliminary condemnation order that the condemnation of the land or other real property may proceed in accordance with the provisions of this chapter.

5. If the property sought to be appropriated is a sand, stratum or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir, and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the said underground gas storage reservoir, and for the use in connection with the creation, operation and maintenance thereof, and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property; provided, however, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas.

1974 SUPPLEMENT

The court shall appoint three (3) persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.

History: Amd. Sec. 207, Ch. 253, L. 1974.

History: Ap. p. Sec. 589, p. 193, L. 1877; re-en. Sec. 589, 1st Div. Rev. Stat. 1879; re-en. Sec. 697, 1st Div. Comp. Stat. 1887; amd. Sec. 2229, C. Civ. Proc. 1895; re-en. Sec. 7340, Rev. C. 1907; re-en. Sec. 9948, R. C. M. 1921; amd. Sec. 4, Ch. 245, L. 1938; amd. Sec. 10, Ch. 259, L. 1955; amd. Sec. 3, Ch. 234, L. 1961. Cal. C. Civ. Proc. Sec. 1247.

Default by Defendant

Failure of defendant in condemnation proceedings to appear, either by demurrer or answer, does not relieve the court of the duty of determining whether the use for which the property sought to be condemned is a public use, limiting the amount taken to the necessities of the case, and ascertaining the damages as provided in this section and sections 93-9912 and 93-9915. *Yellowstone Park R. Co. v. Bridger Coal Co.*, 34 M 545, 555, 87 P 993.

Determination of Necessity

In an action by the state to condemn land for interstate highway or controlled access facility the trial judge has the power to determine the public necessity of the proposed highway or facility. *State v. Yost Farm Co.*, — M —, 384 P 2d 277, 281.

Under this section and section 93-9905 the trial judge not only has the power to determine the question of necessity, but

has been directed to make a finding that the public interest requires the taking of the lands before he has power to issue an order of condemnation. *State v. Yost Farm Co.*, — M —, 384 P 2d 277, 279.

Trial judge had authority to deny necessity in action by state to condemn land for interstate highway or controlled access facility. *State v. Yost Farm Co.*, — M —, 384 P 2d 277, 280.

Necessity of Use

The taking of private property for the private use of another violates the fourteenth amendment to the federal constitution, and the legislature has not the power to declare that that which is in truth a private use shall be a public one, the question whether a particular use is a private or public one being determinable by the courts. *Komposh v. Powers*, 75 M 493, 501, 244 P 298.

Necessity was properly denied where trial court found that proposed highway would not benefit the people living in its vicinity, nor the public in general, and that the construction of the road was not in the public interest. *State v. Yost Farm Co.*, — M —, 384 P 2d 277, 282.

Collateral References

Eminent Domain 198 et seq., 210.

29 C.J.S. Eminent Domain §§ 257 et seq., 292 et seq.

93-9912. (99-44) Appointment and meeting of commissioners. Immediately upon making and entering the preliminary condemnation order the judge must meet with the respective parties, or their attorneys of record, for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The court must thereupon appoint three (3) qualified, disinterested condemnation commissioners. One of such commissioners shall be nominated by the party or parties plaintiff; one of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two (2) commissioners previously nominated, provided, however, that if said two (2) commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge. Each commissioner shall possess the following qualifications: a citizen of the United States and over eighteen (18) years of age; that he is not more than seventy (70) years of age; that he is in possession of natural faculties, of ordinary intelligence and not decrepit; that he is possessed of sufficient knowledge of the English language; that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending; that he has not been convicted of malfeasance in office, or any felony or other high crime; that he is not related within the sixth degree to any party; that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent, or partner or surety as to any party. At the time of such meeting and nominations there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows: that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants; and that he has no enmity against or bias in favor of any party and has not discussed, communicated or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded or to be awarded; that if selected as a condemnation commissioner he is willing to serve and will well and truly try the issues of compensation and a true decision render according to the evidence and in compliance with the instructions of the court; that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

1873 SUPPLEMENT

Immediately upon such nomination and appointment of commissioners the same shall proceed to meet at the time and place stated in the order appointing them, which time shall be not more than ten (10) days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said ten (10) day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land. Such hearing shall be attended by, and presided over by, the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence. At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings and the instructions of the court, the following:

1. The value of the property sought to be appropriated and all improvements thereon pertaining to the realty, and of each and every separate estate and interest therein; if it consist of different parcels, the value of each parcel and each estate or interest therein must be separately assessed.

2. If the property sought to be appropriated constitutes only a part of a larger parcel, the depreciation in value which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

3. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the construction of the improvements proposed by the plaintiff, and if the benefit shall be equal to the amount assessed under subdivision 2, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the amount assessed under subdivision 2, the former shall be deducted from the latter, and the remainder shall be the only amount allowed in addition to the value.

4. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

5. Where there are two (2) or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the

History: En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7311, Rev. C. 1907; re-en. Sec. 9944, E. C. M. 1921; amd. Sec. 4, Ch. 234, L. 1961. Cal. C. Civ. Proc. Sec. 1248.

Adjacent Property Damaged

Damages accruing to adjacent property from improper construction of a railroad are not allowable in condemnation proceedings for a railroad right of way. *Montana R. Co. v. Freeser*, 29 M 210, 213, 74 P 407.

Alteration of Commissioners' Award

Although this section as amended in 1961 gives the presiding judge supervision over the commissioners, it does not grant to the court the right to amend or alter their award. *State ex rel. Frelich v. District Court*, — M —, 375 P 2d 1016, 1018.

Ascertainable Damages

It is not every possible element of depreciation in value of land a portion of which is taken for highway purposes for which compensation may be awarded; recoverable damages must be the natural and proximate consequence of the taking; they must be direct and certain, actual, reasonable and readily ascertainable, not remote, speculative or contingent. *Lewis and Clark County v. Nett*, 81 M 261, 265, 263 P 418.

Recoverable damages in eminent domain proceedings must be the natural and proximate consequence of the taking of the lands; they must be readily ascertainable and not remote, speculative or contingent. *State v. Bradshaw Land & Live Stock Co.*, 99 M 93, 43 P 2d 674.

Evidence that the taking of land for highway purposes through a cattle country would, after constructing fences, result in cattle breaking through the fences in search of water or when alarmed by automobiles, necessitating employment of additional help to make repairs, etc., was in-

admissible as referring to an element of damage too remote, speculative and conjectural. *State v. Bradshaw Land & Live Stock Co.*, 99 M 93, 43 P 2d 674.

Benefits Offset

Where land is taken by a railroad company for right of way purposes, general neighborhood benefits resulting to the owner in common with others from the construction of the road, the building of a depot, elevator, etc., but not peculiar or special to himself, may not be set off against the damages resulting to him from the taking of the land; hence evidence of such general benefits was properly excluded. *Gallatin Valley Electric Ry. v. Neible*, 57 M 27, 186 P 689.

Default by Defendant

The defendant in condemnation proceedings is required to appear, either by demurrer or answer; and if he fails so to do, he has no standing in court for any purpose, and may not be heard in the subsequent proceedings, notwithstanding the provisions of this section that the commissioners shall hear the allegations and evidence of all persons interested, said section having reference to cases where the parties defendant are not in default. *Yellowstone Park R. Co. v. Bridger Coal Co.*, 34 M 545, 554, 87 P 963; *State ex rel. Culbertson Ferry Co. v. District Court*, 49 M 595, 600, 141 P 159.

Discontinuance of Highway

The owner of land abutting on a country highway, as distinguished from a city street, has no property or other vested right in the continuance of it as a highway, and may not claim damages for its discontinuance, caused by the laying out of a new road by the highway commission, for inconvenience caused to the owner in marketing his farm products, or for diverting traffic from his door, diminishing his trade and thus depreciating the value of

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his land. *State v. Hoblitt*, 87 M 403, 408 et seq., 283 P 151.

Examination of Premises

Where land, sought to be condemned by a corporation for the construction of a dam to be used in the generation of electric power, had been flooded prior to the appointment of commissioners to determine the damages, an objection to their appointment was properly overruled, in the absence of any evidence that the water could or would not be withdrawn to enable an examination of the premises. *Spratt v. Helena Power Transmission Co.*, 37 M 60, 90, 94 P 631.

Fencing Costs

In the absence of statutory provision therefor, in determining the damages incident to the taking of ranch land for highway purposes, allowance may not be made for a fence as such, and proof of the necessity of fencing and its cost is proper only as a means of showing the depreciation in market value of the remaining land by reason of the taking of the highway strip. *Lewis and Clark County v. Nett*, 81 M 261, 265, 263 P 418.

Measure of Damages

The measure of damages in a proceeding for the condemnation of land for a public highway is the fair cash market value of the land sought to be condemned with the depreciation of such value of the land from which the strip is to be taken, less allowable deductions for benefits proven, the values to be determined as of the date of the commencement of the proceeding. *Lewis and Clark County v. Nett*, 81 M 261, 265, 263 P 418.

Railroad Crossings

In condemnation proceedings by a railroad company to obtain parts of the right of way of another road, the question of damages for crossings may be properly referred to commissioners. *Butte, Anaconda & Pacific Ry. Co. v. Montana Union Ry. Co.*, 16 M 504, 549, 41 P 232.

Severance Damages

While ordinarily damages for the taking of land for highway purposes may be awarded for injury done to the particular lot or tract of land from which the right of way strip is taken regardless of what other lands the owner may possess, where a small tract from which the strip is sought to be taken is isolated from a ranch proper by a railroad but used for the pasturing of dairy cows milked upon the ranch, the additional inconvenience and danger in the use of the pasture by the construction of a highway on which automobiles are

constantly passing may be considered as an item of damages, as may also the construction of a fence along the highway to maintain the inclosure. *State v. Hoblitt*, 87 M 403, 408 et seq., 283 P 151.

Within the meaning of subdivision 2, parts of the whole tract separated by intervening private lands are generally considered as independent parcels. *State v. Bradshaw Land & Live Stock Co.*, 99 M 93, 43 P 2d 674.

By eminent domain proceedings the state sought to acquire a strip of land containing 85 acres for highway purposes from a body of land comprising more than 21,000 acres used for livestock purposes. While the major body of the land was inclosed by a common fence, a number of tracts therein were owned by others, and the common fence was maintained by mere license, acquiescence or failure to protest. A number of tracts controlled by defendant were noncontiguous and some were more than nine miles from the desired right of way. Error was committed in admitting evidence showing damage to all the lands, whether contiguous or not, on the theory that they were used as a unit as grazing lands in defendant's livestock operations. *State v. Bradshaw Land & Live Stock Co.*, 99 M 93, 43 P 2d 674.

To fully determine damages caused by severance of condemned land, subdivision 2 of this section is not read alone; rather it must be read in connection with section 93-9913, as amended. *State v. Milanovich*, — M —, 384 P 2d 752, 757.

Where defendants owned seven contiguous lots upon which they had constructed their home and an income producing residence, planning to build a multiple family dwelling on three of the vacant lots, the seven lots constituted a single unit and in action by state to condemn part of the three vacant lots for highway purposes, the unity of use doctrine allowing depreciation of value of remaining land was applicable in assessing damages. *State v. Milanovich*, — M —, 384 P 2d 752, 756.

Waiver of Objections to Commissioners' Report

Where commissioners, appointed to assess damages occasioned by the taking of land through eminent domain proceedings, do not perform their whole duty in the premises, either by reason of their nonfeasance or malfeasance, the injured party may appeal or move to set aside their report. Upon failure to invoke either of these remedies, such party may not thereafter be heard to say that his property was taken without due process of law. *Spratt v. Helena Power Transmission Co.*, 37 M 60, 94, 94 P 631.

References

Great Northern Ry. Co. v. Fiske, 54 M 231, 233, 169 P 44; State v. Anderson, 92 M 313, 315, 13 P 2d 228.

Collateral References

Eminent Domain—225-239.
29 C.J.S. Eminent Domain § 292 et seq.

Unity or contiguity of properties essential to allowance of damages in eminent domain proceedings on account of remaining property. 6 ALR 2d 1193.

New or additional compensation for use by municipality or public of subsurface of street or highway for purposes other than sewers, pipes, conduits for wires, and the like. 11 ALR 2d 180.

Conditions imposed to approval of proposed subdivision map or plat as constituting taking of property for public use without compensation. 11 ALR 2d 532.

Admissibility in condemnation proceedings of opinion evidence as to probable profits derivable from land condemned if devoted to particular agricultural purposes. 16 ALR 2d 1113.

Quotient condemnation report or award by the commissioners or the like. 39 ALR 2d 1208.

Computation of abutting owner's damages for loss of access because of limited access highway or street. 43 ALR 2d 1074.

Measure of compensation in condemnation proceedings for pollution of stream. 49 ALR 2d 267, 278.

Measure of damages for condemnation of lands of cemetery. 62 ALR 2d 1175.

Compensation or damages for condemning a public utility plant. 68 ALR 2d 392.

Cost to property owner of moving personal property as involving speculative damages or compensation in eminent domain proceedings. 69 ALR 2d 1453.

Measure of damages or compensation in eminent domain as affected by premises being restricted to particular educational, religious, charitable, or noncommercial use. 75 ALR 2d 1382.

Interference with view as matter of damages for consideration in eminent domain. 84 ALR 2d 348.

DECISIONS UNDER FORMER LAW**Appeal from Commissioners' Award**

A commissioner's assessment is not a judgment, but merely an award by the lay commissioners of damages contained in their report, and, where an appeal has been perfected by the condemnor from the assessment, the condemnor is entitled to have a necessary party added as a party defendant. State ex rel. State Highway Commission v. District Court, 136 M 362, 248 P 2d 132.

Expert Testimony

Testimony of right of way agents who had been engaged in the process of appraising real estate for some time all over the state, and had extensive experience in and knowledge of real estate values in community and elsewhere, should have been admitted by court to establish value of property taken by plaintiff for new highway. State v. Peterson, 134 M 52, 328 P 2d 617, 623.

Jury Findings

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by section 14, article III, of the Montana constitution. State v. Peterson, 134 M 52, 328 P 2d 617, 620.

The district court did not err in submitting verdicts to the jury by which damages were fixed in one sum and without separately stating the amount of dam-

age for the taking and the damage to the remainder where all other witnesses testified as to one figure only, and gave their basis for it; state's counsel, on cross-examination, did not attempt nor could he, segregate the two items, they being interwoven in the very nature of the methods of appraisal; and it would not have been practical, even if possible, to have asked the jury to separately fix the figures because of the manner in which the testimony was produced by both sides. State v. Heltberg, 140 M 196, 369 P 2d 521, 525.

Removal of Improvements

In proceedings to condemn tract of land for new highway which would leave defendant's business on old highway, testimony concerning removal of gas tanks was wholly incompetent. Landowner was not required to remove his buildings or fixtures from the land taken and accept an amount of money to defray costs of removal. State v. Peterson, 134 M 52, 328 P 2d 617, 624.

Valuation of Property

Income could be used as a basis for arriving at market value in condemnation case where testimony of the various witnesses for both the landowners and the state, who explained their method of valuation, used the same general approach in determining the loss in value, which approach was labeled the "capitalization of income" approach. State v. Heltberg, 140 M 196, 369 P 2d 521, 523.

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93-9913. (9945) The date with respect to which compensation shall be assessed. For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in

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value of property not actually taken, but injuriously affected. This shall not be construed to limit the amount of compensation payable by the state highway commission under the provisions of any legislation enacted pursuant to the Federal Highway Beautification Act of 1965. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw lawful interest from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

(a) The date on which the right to appeal to the Montana supreme court expires, or if appeal is filed, to the date of final decision by the supreme court, or

(b) The date on which the property owner withdraws from court the full amount finally awarded.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (a) and (b) of this section. None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation.

History: En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1897; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965; amd. Sec. 1, Ch. 187, L. 1967; amd. Sec. 12, Ch. 212, L. 1969. Cal. C. Civ. Proc. Sec. 1249.

Compiler's Notes

The Federal Highway Beautification Act of 1965, referred to in the first paragraph of this section, is compiled in the United States Code as Tit. 23, secs. 131, 136 and 319.

Amendments

The 1965 amendment divided the section into paragraphs; substituted "full amount finally awarded" for "amount awarded" before "shall draw lawful interest" in the third sentence of the first paragraph; substituted "earlier of the following dates" and clauses (a) and (b) at the end of the first paragraph for "date of receipt of the award or any portion thereof"; and substituted the first two sentences of the final paragraph for "provided, however, that interest shall not be allowed or paid on so much thereof as shall have been paid to the landowner in-

volved or withdrawn by such landowner from the court."

The 1967 amendment added to the first sentence of the initial paragraph, "and the reasonable cost of removal of all necessary personal property from the condemned real property within a reasonable distance in the area, not to exceed the sum of six thousand dollars (\$6,000) in the case of a business, farm or ranch relocation, and not to exceed the sum of four hundred dollars (\$400) in any other case"; inserted the second sentence; and, at the end of subparagraph (a), added "if appeal is filed to the date of final decision by the supreme court, or."

The 1969 amendment deleted the provision, inserted by the 1967 amendment, concerning removal of personalty.

Separability Clause

Section 2 of Ch. 182, Laws 1965 read "If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act."

Repealing Clause

Section 3 of Ch. 182, Laws 1965 read "All acts, or parts thereof, inconsistent

herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act or part thereof, heretofore repealed."

Effective Date

Section 4 of Ch. 182, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

Appeal

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by section 14, article III of the Montana constitution. *State Highway Commission v. Woodcock*, 147 M 291, 411 P 2d 357.

Assessment of Compensation

Where condemnee's house was between 50 and 60 years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. *State Highway Commission v. Tubbs*, 147 M 296, 411 P 2d 739.

Commercial Use

Where state highway commission in order to show public access to highway presented two appraisal witnesses to show that there was access at a certain exit in which case there would be no loss of commercial usefulness, it was quite proper and necessary to rebut this testimony and to let the jury know the type of easement provided for the access exit. *State ex rel. State Highway Commission v. Wheeler*, 148 M 246, 419 P 2d 492, 498.

Cost of Moving Personal Property

Where friends of condemnees gratuitously aided them in moving personal property from condemned realty, condemnees were not entitled to recover the costs of their friends' labor as an element of damages. *State Highway Commission v. Manry*, 143 M 382, 390 P 2d 97.

Depreciation on Inventory

This section requires the state to pay for any damage to personal property removed from condemned land including any depreciation in the inventory value of such property. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604.

Improvements

In eminent domain proceeding trial court did not err in excluding evidence concerning improvement of sole access road to ranch property remaining after state highway commission had taken part of the property for right of way for interstate highway, where any changes in access were made after the date of service of the summons in the condemnation action. *State ex rel. State Highway Commission v. Wheeler*, 148 M 246, 419 P 2d 492, 497.

Market Value

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604.

Where state not only took part of plaintiff's land, but also eliminated an old channel of water and diked up a new channel, thus creating a flood basin on plaintiff's land, evidence of actual results of taking was proper, even though land values are usually measured as of the date of summons. *State Highway Commission v. Biastorh Meats, Inc.*, 145 M 261, 400 P 2d 274.

When there is a market for the type of property being condemned, and the property has no other intrinsic value, courts will adopt a market value in determining the actual value of the property, which is nothing more than the price resulting from fair negotiations between a willing seller and buyer. *State Highway Commission v. Tubbs*, 147 M 296, 411 P 2d 739.

Where actual value as determined by jury is based on credible testimony as to market value of highest and best use for which land is available, the verdict and judgment will not be set aside. *State Highway Commission v. Vaughan*, 155 M 277, 470 P 2d 967.

References

State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751.

"Actual value" as used in this section means market value. *State v. Peterson*, 134 M 52, 328 P 2d 617, 627.

In attempting to ascertain market value, the location of the land, the character of the neighborhood, and all things surrounding the property may be shown. *State v. Peterson*, 134 M 52, 328 P 2d 617, 627.

Lessee is entitled to be reimbursed for the taking of his lease and the measure is the actual market value of said lease at the time of taking. No lesser measure may be permitted. *State v. Crow*, — M —, 384 P 2d 273, 276.

"Actual value" spoken of in this section is the market value or the price that would in all probability result from fair negotiation, where the seller is willing to sell and the buyer desires to buy. *State v. Milavich*, — M —, 384 P 2d 752, 757.

Potential Use of Property

The owner of land sought to be condemned has the right to obtain its market value, based upon its availability for the most valuable purpose for which it can be used, whether so used or not, and since under this section the market value at the date of the summons controls, the land must be shown to have been marketable for the purpose stated at that time; the showing must be that the use is one to which the land may reasonably be applied; speculative uses, remote and conjectural possibilities, such as that farm lands might be platted into town lots, or as to what they would bring if certain fruit

trees were planted thereon, are not to be taken into consideration. *State v. Hoblitt*, 87 M 403, 413, 283 P 181.

Evidence may be introduced as to the various uses to which the property is adapted, even though it has never been put to such use in fact. *State v. Peterson*, 134 M 52, 328 P 2d 617, 627.

Severance Damages

To fully determine damages caused by severance of condemned land, section 93-9912, subdivision 2, is not read alone; rather it must be read in connection with this section as amended. *State v. Milavich*, — M —, 384 P 2d 752, 757.

References

Butte Electric Ry. Co. v. Mathews, 34 M 487, 492, 87 P 460; *Great Northern Ry. Co. v. Fiske*, 54 M 231, 234, 169 P 44; *Gallatin Valley Electric Ry. v. Neible*, 57 M 27, 37, 186 P 689.

Collateral References

Eminent Domain 124-150.
29 C.J.S. *Eminent Domain* § 136 et seq.
18 Am. Jur. 751, *Eminent Domain*, § 128 et seq.

Interest on damages for period before judgment for property taken under power of eminent domain. 36 ALR 2d 413.

Compensation or damages for condemning public utility plant as affected by acquisition of property after date of taking. 68 ALR 2d 400, 407.

93-9914. (9916) Report of commissioners. The report of commissioners shall be made on such forms as are provided for their use by authority of the court. Such report must be filed within ten (10) days after the completion of the hearing, or within such additional time as may be allowed by the judge, upon a clear showing of necessity therefor, and must be filed with the clerk of court and the clerk must forthwith notify the parties interested that such report has been filed, with notice, together with a true copy of said report, must be served upon all the parties interested, in the same manner as a summons. A concurrence of two (2) commissioners shall be necessary to the making of a final report or award as to any parcel of property, or interest therein. In the event that no two (2) of the said commissioners are able to agree as to the amount of any award they shall report such fact to the judge or court within the time hereinbefore specified and the court must forthwith impanel and appoint new commissioners as hereinbefore provided, which commissioners shall proceed as provided before herein to determine any award upon which the previous commissioners failed to agree.

The report of said commissioners shall also state the number of days, or portions thereof, consumed by the commissioners in performance of their duties as prescribed herein.

93-9915. (9947) Appeal from assessment of commissioners. An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of said commissioners is filed by any party interested. Such appeal must be taken within the period of thirty (30) days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the opposing party or his attorney in such proceedings and the filing of the same in the district court wherein the action is pending, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the amount to which appellant may be entitled, by reason of the appropriation of his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such amount by commissioners; upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interests and costs allowed by law, if any, the right to construct and maintain the highway, railroad, or other public work or improvement, and to take, use and appropriate the property described in such verdict or assessment, for the use and purposes for which said land has been condemned, shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff and his or its heirs, successors or assigns forever. In case the party appealing from the award of the commissioners in any proceeding, as aforesaid, shall not succeed in changing to his advantage the amount finally awarded in such proceeding, he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant; provided, that upon the trial of such appeal, the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in said appeal, which was located after the preliminary survey of any such highway or railroad, seeking to condemn its right of way under and pursuant to the provisions of this act; provided,

such condemnation proceedings are begun within one year after such preliminary survey.

History: En. Sec. 603, p. 220, L. 1887; re-en. Sec. 2224, C. Civ. Proc. 1895; re-en. Sec. 7314, Rev. C. 1907; re-en. Sec. 9947, R. C. M. 1921; amd. Sec. 1, Ch. 145, L. 1927; amd. Sec. 7, Ch. 231, L. 1961.

Alteration of Award

Improper order of district court in striking certain damages from commissioners' award could not be corrected where an appeal had been taken from the award. *State ex rel. Frelich v. District Court*, — M —, 375 P 2d 1016, 1018.

Assessment of Damages

Findings of the jury, in condemnation proceedings, with relation to the amount of damages sustained by defendants by the taking of a railroad right of way through their lands, complained of as excessive, will not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of the "just compensation" provided for by section 14, article III, of the constitution. *Yellowstone Park R. Co. v. Bridger Coal Co.*, 34 M 515, 563, 87 P 963. See also *Lewis v. Northern Pacific Ry. Co.*, 36 M 507, 224, 92 P 469.

The provision that upon appeal from the award of the commissioners the damages "shall be reassessed upon the same principle as heretofore prescribed for the assessment of such damages by commissioners" simply means that the assessment shall be made conformably to section 93-9912, which has to do with a finding on the separate items of damages. *State v. Anderson*, 92 M 313, 317, 13 P 2d 228.

Constitutional Rights

Where a railroad company pays a sum into court on an award of damages made by commissioners for right of way for railroad purposes, this is to be regarded as a "just compensation," within section 14, article III, of the constitution, although the owner has appealed from the award; and the granting of an order by the court, allowing the railroad company possession and use of such right of way pending such appeal, is proper. *State ex rel. Volunteer Min. Co. v. McFattson*, 15 M 159, 160, 38 P 711.

In condemnation proceedings, the right to appeal is purely statutory, and may be granted to, or withheld from, either party or both, at the discretion of the legislature, if no constitutional provision is thereby infringed. *Great Northern Ry. Co. v. Fiske*, 34 M 231, 233, 169 P 44.

Costs on Appeal

The provision for award of costs to the

respondent if the party appealing to the district court shall not succeed in changing to his advantage the amount of damages awarded, applies only to an appeal by defendant; hence, where plaintiff state appealed, and the court exercised the discretion vested in it by section 93-9921, and awarded costs against plaintiff, the damages awarded by the jury being substantially the same as those awarded by the commissioners, the supreme court will not interfere. *State v. Bradshaw Land & Live Stock Co.*, 99 M 95, 112, 43 P 2d 674.

Entire Award as Subject of Appeal

If there is any right to appeal under this section, given to a railroad company, from the judgment on an award by commissioners in condemnation proceedings instituted by the company, such appeal must, in view of sections 93-9912 to 93-9914, inclusive, and sections 93-9917 and 93-9920 be taken from the entire award; it cannot be taken from such portions of the award only as the condemner is dissatisfied with. *Great Northern Ry. Co. v. Fiske*, 34 M 231, 233, 169 P 44.

Issues Considered on Appeal

If commissioners appointed to assess damages in eminent domain proceedings do not perform their whole duty, the injured party may appeal. *Spratt v. Helena Power Transmission Co.*, 37 M 60, 94, 94 P 631.

The sole question presented to the district court on appeal from the award of commissioners in condemnation proceedings, under this section, is as to the amount of damages to be allowed, and the judgment should determine that issue and no other. *Great Northern Ry. Co. v. Benjamin*, 31 M 167, 175, 149 P 968.

The state cannot appeal from decision of commissioners, contesting right of county to receive damages, when it did not raise the issue in the pleading stage. *State v. Park County*, — M —, 376 P 2d 998.

Parties Added on Appeal

A commissioner's assessment is not a judgment, but merely an award by the lay commissioners of damages contained in their report, and, where an appeal has been perfected by the condemner from the assessment, the condemner is entitled to have a necessary party added as a party defendant. *State ex rel. State Highway Commission v. District Court*, 136 M 362, 348 P 2d 132.

Title of Defendant

Where, in a proceeding to condemn a right of way, plaintiff alleges title in defendant, a contention that the verdict for

damages was not supported by the evidence, because there was no evidence that defendant's title was valid, cannot be considered by the supreme court. *Helena & Livingston Smelting & Reduction Co. v. Lynch*, 25 M 497, 498, 65 P 919.

View of Premises by Jury

A view by the jury of premises involved in an eminent domain proceeding does not amount to the taking of testimony, but is allowed to enable the jury better to understand the evidence received at the hearing. *State v. Lee*, 103 M 482, 486, 63 P 2d 135.

Witnesses on Appeal

On appeal by state from condemnation award, where it was made clear on direct examination that expert witness for landowner had been one of the commissioners appointed to appraise damages, it was reversible error for the state to try to impeach the witness by using the commission award in order to get the whole commission award before the jury. *State v. Bare*, — M —, 377 P 2d 357, 359.

References

Helena Power Transmission Co. v.

Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence,

Spratt, 40 M 254, 255, 106 P 5; *State ex rel. Culbertson Ferry Co. v. District Court*, 49 M 595, 600, 144 P 159; *Gallatin Valley Elec. Ry. v. Neible*, 57 M 27, 33, 186 P 689; *Lewis and Clark County v. Nett*, 81 M 261, 265, 263 P 418.

Collateral References

Eminent Domain—238, 239.

29 C.J.S. *Eminent Domain* § 281; 30 C.J.S. *Eminent Domain* § 372.

18 Am. Jur. 1016, *Eminent Domain* § 373 et seq.

Provision for taking or retaining possession pending appeal. 55 ALR 201.

Court's right to reduce or increase award and confirm it as reduced or increased. 61 ALR 194.

Constitutionality of provisions as to tribunal which shall fix amount of compensation for taking of property in eminent domain, otherwise than objections that a trial by jury is necessary. 74 ALR 569.

Who is "adverse party" entitled to notice of appeal. 88 ALR 447.

Right to view by jury in condemnation proceedings. 77 ALR 2d 548.

and did not reflect an increased valuation due solely to a distribution of title. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604, distinguished in *State Highway Commission v. Barnes*, 151 M 300, 443 P 2d 16.

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93-9916. (9948) How proceedings to cure defective title. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed.

History: En. Sec. 592, p. 194, L. 1877; re-en. Sec. 592, 1st Div. Rev. Stat. 1879; re-en. Sec. 610, 1st Div. Comp. Stat. 1887; re-en. Sec. 2225, C. Civ. Proc. 1895; re-en. Sec. 7315, Rev. C. 1907; re-en. Sec. 9918, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1250.

v. District Court, 136 M 362, 348 P 2d 132, 135 (dissenting opinion).

Collateral References

Eminent Domain—166 et seq.

29 C.J.S. *Eminent Domain* § 209 et seq.

References

State ex rel. State Highway Commission

93-9917. (9949) Payment of damages or deposit of bond therefor. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, at the time of or before the payment, elect to build the fences and cattle guards, and, if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed cost of the same, to build such fences and cattle guards within eight months from the time the railroad is built on the land taken, and, if such bond be given, need not pay the cost of such fences and cattle guards. In an action on such bond, the plaintiff may recover reasonable attorney's fees.

History: En. Sec. 593, p. 194, L. 1877; re-en. Sec. 593, 1st Div. Rev. Stat. 1879; re-en. Sec. 611, 1st Div. Comp. Stat. 1887; amd. Sec. 2226, C. Civ. Proc. 1895; re-en. Sec. 7346, Rev. C. 1907; re-en. Sec. 9949, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1251.

References

Great Northern Ry. Co. v. Fiske, 54 M 231, 234, 169 P 44.

Collateral References

Eminent Domain—159-163, 188, 249.

29 C.J.S. *Eminent Domain* §§ 191, 205,

Delay in Payment of Damages

In eminent domain proceedings where the state highway commission did not move within thirty days as required by this section, it could not excuse its failure

to pay by alleging that it had no notice of the entry of judgment when the commission itself had caused the judgment to be entered. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

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93-9918. (9950) Damages—to whom paid. Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings, and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

History: En. Sec. 594, p. 194, L. 1877; re-en. Sec. 594, 1st Div. Rev. Stat. 1879; re-en. Sec. 612, 1st Div. Comp. Stat. 1887; re-en. Sec. 2227, C. Civ. Proc. 1895; re-en. Sec. 7347, Rev. C. 1907; re-en. Sec. 9950, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1252.

Constitutionality

Section 93-9905, this section, and sections 93-9919 and 93-9920, authorizing an appeal by plaintiff after payment of the judgment into court for defendant and after securing possession of the land, do not contravene section 14, article III, of the constitution prohibiting the taking of private property for public use without paying just compensation therefor. State

Delay in Payment of Damages

In eminent domain proceeding where the state highway commission did not move within thirty days as required by section 93-9917, it could not excuse its failure to pay by alleging that it had no notice of the entry of the judgment when the commission itself had caused the judgment to be entered. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

93-9919. (9951) Final order of condemnation—what to contain—when filed, title vests. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court or judge must make a final order of condemnation, which must describe the property condemned, and the purposes of such condemnation. A copy of the order must be filed in the office of the county clerk, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

History: En. Sec. 595, p. 195, L. 1877; re-en. Sec. 595, 1st Div. Rev. Stat. 1879; re-en. Sec. 613, 1st Div. Comp. Stat. 1887; re-en. Sec. 2228, C. Civ. Proc. 1895; re-en. Sec. 7348, Rev. C. 1907; re-en. Sec. 9951, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1253.

Constitutionality

Sections 93-9905, 93-9918, 93-9920, and this section, authorizing an appeal by plaintiff after payment of the judgment into court for defendant and after securing possession of the land, do not contravene section 14, article III, of the constitution prohibiting the taking of private property for public use without paying just compensation therefor. *State v. Bradshaw Land & Live Stock Co.*, 99 M 95, 43 P 2d 674.

93-9920. (9952) Putting plaintiff in possession. At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court, and either before or after appeal from such assessment, or from any other order

v. Bradshaw Land & Live Stock Co., 99 M 95, 43 P 2d 674.

Payment to Trustee

A trustee, as holder of the legal title to land taken by a railroad company in condemnation proceedings, is prima facie entitled to the money ordered paid to him. *Forbis v. Cannon*, 35 M 424, 427, 90 P 161.

Collateral References

Rights in condemnation award where land taken was subject to possible rights of reverter or re-entry. 81 ALR 2d 568.

Distribution as between life tenant and remainderman of proceeds of condemned property. 91 ALR 2d 963.

Stay of Execution

Where state highway commission filed notice of appeal and perfected their appeal after writ of execution under this section had issued, the appeal stayed the judgment although no bond was filed as required by section 93-9911 since under Rule 62(c), no security was required from the state. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

Time of Payment

The final order of condemnation follows the payment of an award, and cannot be entered in advance without infringing the constitutional provision that private property shall not be taken without just compensation having been first made to, or paid into court for, the owner. *Great Northern Ry. Co. v. Benjamin*, 51 M 167, 175, 149 P 968.

Collateral References

Eminent Domain—241.

29 C.J.S. Eminent Domain §§ 319, 321-325.

Condemner's waiver, surrender or limitation, after award, of rights or part of property acquired by condemnation. 5 ALR 2d 724.

or judgment in the proceedings, the court or any judge thereof at chambers, upon application of the plaintiff, shall have power to make an order that upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer or the amount assessed, either by the commissioners or by the jury, as the case may be, the plaintiff be authorized, if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or, if not in possession, that the plaintiff be authorized to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation, and that all actions and proceedings against the plaintiff on account thereof be stayed until such time; provided, however, that where an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff, before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking, with sufficient sureties, to be approved by the judge and to be in such sum as the court or judge may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

The amount assessed by the commissioners, or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed, or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment, but may appeal in the same manner and with the same effect as if no money had been deposited or security given; and in all cases where the plaintiff deposits the amount of the assessment and continues in possession, or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court, all or any part of the money so deposited, and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment, but may, notwithstanding, take and prosecute his appeal from such assessment; provided, that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and, provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than seventy-five (75) per cent of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of seventy-

five (75) per cent, with sureties to be approved by the court; to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings.

History: Ap. p. Sec. 596, p. 195, L. 1877; re-en. Sec. 596, 1st Div. Rev. Stat. 1879; amd. Sec. 614, 1st Div. Comp. Stat. 1887; amd. Sec. 2, p. 272, L. 1891; en. Sec. 2220, C. Civ. Proc. 1895; re-en. Sec. 7349, Rev. C. 1907; re-en. Sec. 9952, R. C. M. 1921; amd. Sec. 8, Ch. 234, L. 1961. Cal. C. Civ. Proc. Sec. 1254.

Constitutionality

Sections 93-9905, 93-9918, and 93-9919 and this section, authorizing an appeal by plaintiff after payment of the judgment into court for defendant and after securing possession of the land, do not contravene section 14, article III, of the state constitution prohibiting the taking of private property for public use without paying just compensation therefor. *State v. Bradshaw Land & Live Stock Co.*, 99 M 95, 43 P 2d 674.

Recovery of Excess from Defendant

A recital in condemnation proceedings that plaintiff have judgment and execution against defendant for any sum theretofore paid by plaintiff to defendant in accordance with the award, which award was appealed from, is improper, as the statute gives an ample remedy if plaintiff is entitled to recover any amount from defendant. *Great Northern Ry. Co. v. Benjamin*, 51 M 167, 175, 149 P 968.

Reversal of Order of Condemnation

Merely because a corporation had become a trespasser by reason of the re-

References

State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692 (concurring

versal of an order of the district court empowering it to take lands under condemnation proceedings, it was not thereafter, while still a trespasser, deprived of the right to again invoke the power of eminent domain. *Spratt v. Helena Power Transmission Co.*, 37 M 60, 93, 94 P 631.

After the report and assessment of the commissioners appointed to determine the damages in eminent domain proceedings had been made and filed, and the amount of damages so assessed had been paid into court for the owner of the property, the court properly permitted plaintiff to continue in possession of the property which had theretofore been obtained under an order in a like proceeding; the judgment in which had been reversed on appeal. *Spratt v. Helena Power Transmission Co.*, 37 M 60, 93, 94 P 631.

References

Butte Electric Ry. Co. v. Mathews, 34 M 487, 492, 87 P 460; *Helena Power Transmission Co. v. Spratt*, 40 M 254, 255, 106 P 5; *Great Northern Ry. Co. v. Fiske*, 54 M 231, 233, 169 P 44.

Collateral References

Eminent Domain—187, 188, 249.
29 C.J.S. *Eminent Domain* §§ 221, 227, 332.
18 Am. Jur. 1017, *Eminent Domain*, § 374.

Provision for taking or retaining possession pending appeal. 55 ALR 201.
(opinion); *State Highway Commission v. Churchwell*, 146 M 52, 403 P 2d 751.

93-9921. (9953) Repealed.

Repeal

Section 93-9921 (Sec. 597, p. 195, L. 1877), relating to allowance and appor-

tionment of costs, was repealed by Sec. 2, Ch. 453, Laws 1973. For new law, see sec. 93-9921.1.

93-9921.1. Necessary expenses of litigation. The condemnor, shall within thirty (30) days after an appeal is perfected from the commissioner's award or report, submit to condemnnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnnee then accrued.

If at any time prior to ten (10) days before trial, the condemnnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer. In the event of litigation, and when the private property owner prevails, by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnnee.

History: En. 93-9921.1 by Sec. 1, Ch. 453, L. 1973.

Title of Act

An act implementing article II, section 29 of the 1972 Montana constitution, by providing for an award including necessary expenses of litigation when the pri-

ivate property owner prevails; repealing section 93-9921, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 453, Laws 1973 read "Section 93-9921, R. C. M. 1947, is repealed."

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add expert witness fees other than as an ordinary witness. *State v. Heltborg*, 140 M 196, 369 P 2d 521, 525.

Collateral References

Eminent Domain—265.

30 C.J.S. Eminent Domain § 381 et seq.
18 Am. Jur. 1020, Eminent Domain, § 378 et seq.

Relinquishment of part of land or incorporeal rights therein as affecting costs. 5 ALR 2d 739.

Liability of condemner in eminent domain proceedings for fees of expert wit-

nesses who testified for property owner. 18 ALR 2d 1225.

Liability for costs on appeal relating to amount of condemnation award. 50 ALR 2d 1386.

Costs in proceeding for condemning a public utility plant. 68 ALR 2d 407, 414.

Liability for costs in trial tribunal in eminent domain proceedings as affected by offer or tender by condemner. 70 ALR 2d 804.

Liability of state, or its agency or board, for costs in eminent domain proceeding. 72 ALR 2d 1379.

93-9922. (9954) Rules of practice. Except as otherwise provided in this chapter, the provisions of sections 93-2301 to 93-8717 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

History: En. Sec. 2231, C. Civ. Proc. 1895; re-en. Sec. 7351, Rev. C. 1907; re-en. Sec. 9954, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1256.

Attorney Fees

Under this section, the provisions of sections 93-8601 and 93-8618 are made applicable to condemnation proceedings for a private road of necessity and therefore attorney's fees are not includable as an expense under 93-9923. *Tomten v. Thomas*, 125 M 159, 232 P 2d 723, 725, 26 ALR 2d 1285.

Federal Court Practice

Where United States district court did not make findings of fact and state conclusions of law before entry of judgment, case was remanded with directions to make such findings of fact and state conclusions of law. *Dawson County v. Hagen*, 172 F 2d 387.

Motion to Set Aside Report

In case commissioners to assess damages

in eminent domain proceedings do not perform their whole duty, the injured party may move to set aside their report. *Spratt v. Helena Power Transmission Co.*, 37 M 60, 94, 94 P 631.

Opening and Closing Case

The party upon whom the burden of proof rests is entitled to open and close, and this is the defendant where the only issue is the amount of compensation. *State v. Peterson*, 134 M 52, 328 P 2d 617, 629.

References

Yellowstone Park R. Co. v. Bridger Coal Co., 34 M 545, 554, 87 P 963; *State v. Anderson*, 92 M 313, 317, 13 P 2d 328; *Housing Authority v. Bjork*, 109 M 552, 556, 98 P 2d 324; *Kendrick v. Powell*, 119 M 622, 178 P 2d 859.

Collateral References

Eminent Domain—166 et seq.
29 C.J.S. Eminent Domain § 209.

93-9923. (9955) Private roads. Private roads may be opened in the manner prescribed by this chapter, but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

History: En. Sec. 2232, C. Civ. Proc. 1895; re-en. Sec. 7352, Rev. C. 1907; re-en. Sec. 9955, R. C. M. 1921.

Constitutionality

Whether a way is a public or private one is determined by the extent of the right to use it, not by the extent to which that right is actually exercised; and if a private road sought to be established under

this section, leading from a public highway through lands of a private owner to those owned by plaintiff, may be used by the public generally, although others than plaintiff may have only slight occasion to use it, the statute authorizing its establishment, as this section does under such circumstances, is not open to constitutional objection. *Kompass v. Powers*, 75 M 493, 500 et seq., 244 P 298.

Commissioners Not Appointed

Under section 32-1401, and this section, the appointment of commissioners to determine the damages occasioned by the establishment of a private road is not necessary, and the matters ordinarily determined by commissioners in eminent domain proceedings are determinable by the jury. *Komposh v. Powers*, 75 M 493, 590 et seq., 241 P 293.

Expenses of Proceedings

The provisions in this section for an award of expenses of the proceedings to defendant apply only where the plaintiff is successful. *Kendrick v. Powell*, 119 M 622, 178 P 2d 859.

Attorney's fees are not allowed as an expense of a proceeding in condemnation for a private road of necessity under this section or section 32-1401. Section 93-9922 adopts sections 93-5601 and 93-5618 to the proceedings. Under 93-5601 attorney's fees in condemnation proceedings are not enumerated, nor are they allowed

under 93-5618 as a cost or disbursement unless specifically authorized by law or according to the course and custom of the court. In Montana it is not customary to include attorney's fees as a cost; and in this section and 32-1401 the term "expenses" is synonymous with the term "costs." *Tomten v. Thomas*, 125 M 159, 232 P 2d 723, 725, 26 ALR 2d 1235.

Implied Right of Way

There are no implied grants or reservations of rights of way of necessity in Montana. Property for roads must be condemned. *Simonson v. McDonald*, 131 M 494, 311 P 2d 932, 984, overruling *Herrin v. Sieben*, 46 M 226, 127 P 323; *Violet v. Martin*, 62 M 355, 205 P 221.

Collateral References

Eminent Domain—19 et seq.; Private Roads—1 et seq.

29 C.J.S. Eminent Domain §§ 33-35; 72 C.J.S. Private Roads § 5 et seq.

93-9924. (9956) Exceptions. Nothing in this code must be construed to abrogate or repeal any statute providing for the taking of property in any city, town, or county for road or street purposes.

History: En. Sec. 2233, C. Civ. Proc. 1897, re-en. Sec. 7353, Rev. C. 1907; re-en. Sec. 9956, R. C. M. 1921.

Collateral References

Eminent Domain—167 (5) and other particular topics.

29 C.J.S. Eminent Domain § 217.

93-9925. (9957) Temporary logging roads. In the event that temporary roads for logging purposes or grounds for banking purposes are opened or taken, the same shall include only the temporary right to use the same, and the order of condemnation for said road shall fix the length of time and the date from which such road shall be opened or land shall be used, and at the expiration of said period so fixed, the right to use said road or land shall cease, and the use of said land shall revert to the party from whom the same is taken, or to his legal successor in interest; provided, that no lands or grounds shall be taken for such temporary logging roads or banking grounds for a period of time longer than five years, and when taken for a period of time exceeding one year, the amount of damage for such year shall be fixed separately, and the amount fixed for each particular year must be paid on or before the first day of January of each year; and in the event that the amount so fixed for any one year is not paid as herein specified, then and in that event the use of such lands shall revert to the party from whom the same is taken, or to his successor in interest.

History: En. Sec. 1, Ch. 89, L. 1907; Sec. 7354, Rev. C. 1907; re-en. Sec. 9957, R. C. M. 1921.

References

Simonson v. McDonald, 131 M 494, 311 P 2d 932, 984

Collateral References

Eminent Domain—19, 58, 159-163, 317 et seq.

29 C.J.S. Eminent Domain §§ 33-35, 90, 93, 191, 205.

93-9926. (9958) Damages to be paid before land can be used. In any suit for the opening of any temporary logging road or for the use of any ground or land for banking purposes, the court shall not finally order the opening of such road, nor the right to use such land or ground, until the amount assessed as damages has been paid into court for the benefit of the party or parties owning or holding such land; and in the event that any such land is occupied by a lessee, such lessee shall be made a party to the suit, and the final decree of the court shall apportion the amount of compensation received between the lessee and the owner of such lands, such decree being subject to the right of appeal of any party in interest.

History: En. Sec. 1, Ch. 89, L. 1907;
Sec. 7355, Rev. C. 1907; re-en. Sec. 9958, R.
C. M. 1921.

References

Northern Pacific Ry. Co. v. McAdow,
44 M 547, 552, 121 P 473; Komposh v.
Powers, 75 M 493, 499, 244 P 298.

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93-9927. Relocation assistance—purpose of act. It is the purpose of this act to provide for uniform and equitable treatment of persons dis-

placed from their homes, businesses, or farms as a result of federally assisted programs, to establish uniform and equitable land acquisition policies for federally assisted programs and to comply with the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

History: En. Sec. 1, Ch. 3, 2nd Ex. L. 1971.

Title of Act

An act to provide for relocation as-

sistance to persons displaced as a result of acquisition of land for federally assisted programs and to provide for acquisition practices.

93-9928. Definition of terms in relocation assistance law. As used in this act, unless the context otherwise requires:

(1) "Agency" means the state of Montana, a political subdivision of the state or any department, agency or instrumentality of the state of Montana or of a political subdivision of the state.

(2) "Average annual net earnings" means one-half ($\frac{1}{2}$) of any net earnings of a business or farm operation, before federal and state income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during such other period as the acquiring agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

(3) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) solely for the purposes of section 3 [93-9929] (1) of this act, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(4) "Displaced person" means any person who, on or after the effective date of this act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of an acquiring agency to vacate real property, for a program or project undertaken by the agency, for which federal financial assistance will be available to pay all or any part of the cost; and solely for the purposes of section 3 [93-9929] (1) and (2) and section 6 [93-9932] of this act, as a result of the acquisition of, or as the result of the written order of, the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project. The term

"displaced person" also includes a person who moves or discontinues his business or moves other personal property, or moves from his dwelling as the direct result of code enforcement activities, or a program of rehabilitation of buildings conducted pursuant to a federal program.

(5) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970" or as that act may be amended.

(6) "Federal financial assistance" means a grant, loan, or contribution provided by the United States except any federal guarantee or insurance.

(7) "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(8) "Person" means any individual, partnership, corporation or association.

History: En. Sec. 2, Ch. 3, 2nd Ex.
L. 1971.

93-9929. Payments to displaced persons—moving expense allowance—business losses. (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall make payment to the displaced person, upon application as approved by the agency, for:

(a) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(b) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the agency; and

(c) actual reasonable expenses in searching for a replacement business or farm.

(2) In lieu of payments for actual expenses and losses under subsection (1) of this section a person who is displaced from a dwelling may elect to receive a moving expense allowance determined according to a schedule established by the agency and a dislocation allowance, neither of which may exceed the maximum allowances under section 202 (b) of the federal act.

(3) In lieu of payments for actual expenses and losses under subsection (1) of this section a person who is displaced from his place of business or from his farm operation may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation provided that:

(a) the payment shall not be less nor more than the amounts set forth in section 202 (c) of the federal act;

(b) in the case of a business no payment shall be made under this subsection unless the acquiring agency is satisfied that the business cannot

be relocated without a substantial loss of its existing patronage and is not a part of a commercial enterprise having at least one (1) other establishment not being acquired by an agency, which is engaged in the same or similar business.

History: En. Sec. 3, Ch. 3, 2nd Ex.
L. 1971.

93-9930. Additional payments for displacement from dwelling owned by occupant. (1) In addition to payments otherwise authorized by this act, the acquiring agency shall make an additional payment to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty (180) days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(a) the amount may not exceed the amount allowed under section 203 of the federal act,

(b) the amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subsection (b) shall be made in accordance with regulations issued by the acquiring agency.

(c) the amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty (180) days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(d) reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one (1) year period beginning on the date on which he received from the agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

History: En. Sec. 4, Ch. 3, 2nd Ex.
L. 1971.

93-9931. Additional payments for displacement from rented dwelling. In addition to amounts otherwise authorized by this act the acquiring agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4 [93-9930] of this act if the dwelling was actually and lawfully occupied by the displaced person for not less than ninety (90) days prior to the initiation of negotiations for acquisition of such dwelling. The payment shall be either:

(1) the amount necessary to enable the displaced person to lease or rent for a period not to exceed four (4) years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed the amount allowable under section 204 of the federal act; or

(2) the amount necessary to enable such person to make a down payment (including reasonable expenses for evidence of title, recording fees, and other closing costs incident to the purchase of a dwelling, but not including prepaid expenses) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities. The amount payable under this subsection (2) shall not exceed the amount allowable under section 204 of the federal act and shall be subject to the same matching requirements as under said section.

History: En. Sec. 5, Ch. 3, 2nd Ex.

1971.

93-9932. Relocation advisory services. (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall provide a relocation assistance advisory program for displaced persons which offers the services described in this section. If the acquiring agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services.

(2) The relocation advisory service may include such budget, debt management and related counseling services as the acquiring agency determines will assist the displaced person. The relocation assistance program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) determine the need, if any, of displaced persons, for relocation assistance;

(b) provide current and continuing information on the availability, prices, and rentals of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(c) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(d) supply information concerning federal and state housing programs, disaster loan programs and other federal or state programs offering assistance to displaced persons; and

(e) provide other advisory services to displaced persons in order to minimize hardships to displaced persons in adjusting to relocation;

(f) secure the co-ordination of relocation activities with other project activities and other planned or proposed federal or state actions in the community or nearby areas which may affect the relocation program.

(3) In order to prevent unnecessary expenses and duplication of functions and to promote uniform and effective administration of relocation assistance programs, an agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this act through any federal or state agency having an established organization for conducting relocation assistance programs. Each agency whenever practicable, shall utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

History: En. Sec. 6, Ch. 3, 2nd Ex.
L. 1971.

93-9933. Assurance of availability of suitable replacement dwellings. Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the federal agency concerned with administering the federal financial assistance, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment.

History: En. Sec. 7, Ch. 3, 2nd Ex.
L. 1971.

93-9934. Relocation costs included in project costs—replacement housing. The acquiring agency shall include the cost of providing payments and assistance under the provisions of this act in the cost of any project for which federal financial assistance is available to pay all or any part of the cost. The acquiring agency shall also provide the payments and assistance and assure the availability of replacement housing for displaced persons, who are displaced as a result of real property being acquired by an agency and furnished as a required contribution incident to a federal program or project.

History: En. Sec. 8, Ch. 3, 2nd Ex.
L. 1971.

93-9935. Public assistance eligibility unimpaired—tax exemption of payments. No payment received by a displaced person under this act shall be considered as income or resources for the purpose of determining the eligibility of any person for assistance under any state law or for the purposes of determining income under state tax laws.

History: En. Sec. 9, Ch. 3, 2nd Ex.
L. 1971.

93-9936. Appeal to district court from administrative determination. Any person aggrieved by final administrative determination concerning eligibility for relocation payments authorized by this act may appeal such determination to the district court of the county in which the land acquired is located.

History: En. Sec. 10, Ch. 3, 2nd Ex.
L. 1971.

93-9937. Appraisal and negotiation policies—time allowed to move—condemnation proceedings. An agency which acquires real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of such program or project shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a program or project for which federal financial assistance will be available to pay all or any part

of the cost of the program or project shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least ninety (90) days' written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

History: En. Sec. 11, Ch. 3, 2nd Ex.
L. 1971.

93-9938. Advancement of closing costs and taxes incurred by owner. Any agency acquiring real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses he necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency; penalty costs for prepayment for any pre-existing recorded mortgage or deed of trust entered into in good faith encumbering such real property; and the prorata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

History: En. Sec. 12, Ch. 3, 2nd Ex.
L. 1971.

93-9939. Reimbursement of costs when condemnation proceedings abandoned. Where a condemnation proceeding is instituted by an agency to acquire real property for a program or project for which federal financial assistance is available, and the final judgment is that the real property

not be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for his reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings. The award of such sums will be paid by the agency which sought to condemn the property.

History: En. Sec. 13, Ch. 3, 2nd Ex.
L. 1971.

93-9940. Expenses included in inverse condemnation judgment or settlement. Where an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of his property for any program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or attorney for the acquiring agency effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

History: En. Sec. 14, Ch. 3, 2nd Ex.
L. 1971.

93-9941. Acquisition of buildings and improvements affected—payments to tenant. (1) Where any interest in real property is acquired for a program or project for which federal assistance will be available to pay all or any part of the cost of the program or project, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which are required to be removed from such real property or which the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

Payment for such buildings, structures, or improvements as set forth in this subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements

TITLE 57

NUISANCES

Chapter 1. Nuisances public and private—remedies, 57-101 to 57-115.

CHAPTER 1

NUISANCES PUBLIC AND PRIVATE—REMEDIES

- Section 57-101. Nuisance defined.
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57-104. What is not deemed a nuisance.
57-105. Successive owners.
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57-108. Abatement.
57-109. How regulated.
57-110. Action for public nuisance, when private person may maintain.
57-111. Public nuisance—how abated.
57-112. How abated by persons.
57-113. Remedies for private nuisance.
57-114. Abatement—when allowed.
57-115. When notice is required.

57-101. (8642) Nuisance defined. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway is a nuisance.

History: En. Sec. 4550, Civ. C. 1895; re-en. Sec. 6162, Rev. C. 1907; re-en. Sec. 8642, R. C. M. 1921. Cal. Civ. C. Sec. 3479.

Adverse Possession—Prescriptive Right Limited by Enjoyment—Water

Adverse possession and exercise of right of diverting water for statutory period is sufficient to raise presumption of a grant, and to defeat an action for an injunction against a private nuisance; the extent of the prescriptive right, however, must be limited by the actual enjoyment, and must be commensurate with that enjoyment. *Gibbs v. Gardner*, 107 M 76, 82, 80 P 2d 370.

Construction

This section must be given a common-sense construction so as not to suppress a legitimate business on account of some imaginary or trifling annoyance which offends the supersensitive nerves of a fastidious person; however a home owner may

not be compelled to live in positive discomfort so as to accommodate another in pursuit of business offensive to mind and taste of average individual. *Purcell v. Davis*, 100 M 480, 493, 50 P 2d 255.

Defense in General

Where mining operations constitute a nuisance, it is no defense that they were carried on according to approved methods, that due care was exercised, or that mining is necessary to the industrial life of the particular district. *Cavanaugh v. Corbin Copper Co.*, 55 M 173, 179, 174 P 184.

Grant of Power as a Defense to a Nuisance

In grants of authority to municipal corporations, authority to commit a nuisance will not be implied but must be expressed; when the use and enjoyment of a legislative grant does not necessarily and naturally create a nuisance, but the nuisance results from the method of the use and

of the tenant. In consideration for any such payment the tenant shall assign, transfer, and release all his right, title, and interest in and to such improvements. Nothing in this subsection (2) shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of the state.

History: En. Sec. 15, Ch. 3, 2nd Ex.
L. 1971.

93-9942. Duplication of eminent domain payments not intended. No payment or assistance provided for in this act shall be required to be made by an agency if the displaced person receives a payment required by the laws of eminent domain which is determined by the agency to have substantially the same purpose and effect as such payment under this act.

History: En. Sec. 16, Ch. 3, 2nd Ex.
L. 1971.

93-9943. New rights and powers not created. (1) The provisions of section 7 [93-9933] of this act create no rights or liabilities and shall not affect the validity of any property acquisition by purchase or condemnation.

(2) Nothing in this act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or damage not in existence immediately prior to the effective date of this act.

(3) Nothing in this act shall be construed as, directly or indirectly, granting any new or additional power of eminent domain.

History: En. Sec. 17, Ch. 3, 2nd Ex.
L. 1971.

93-9944. Application to all federally assisted programs. This act shall apply to all acquisitions of real property by an agency for a program or project for which federal financial assistance is available to pay all or any part of the cost.

History: En. Sec. 18, Ch. 3, 2nd Ex.
L. 1971.

enjoyment, the grant constitutes no defense. *Lennon v. City of Butte*, 67 M 101, 105, 214 P 1101.

Nature of Proof Required—Injunction

In seeking to enjoin erection of oil refinery in residential section because, inter alia, of anticipated reduction in market value of nearby property, plaintiff must show injury is practically certain, not merely probable, and that it cannot be compensated by damages in an action at law. *Purcell v. Davis*, 100 M 480, 494, 50 P 2d 255.

Sale of Intoxicating Liquor Not Nuisance in Itself

Sale of intoxicating liquor is not made a nuisance by the general definition of that term in this section. *State ex rel. Nagle v. Naughton*, 103 M 306, 319, 63 P 2d 123.

Sale of Milk at Less than Minimum Price

Sale of milk at price less than minimum prescribed by milk control board under section 27-407 was a nuisance, being an activity which was injurious to health. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 517.

Sports Activities

"Pee wee" baseball league conducted on empty lot in residential district was not nuisance under statute, notwithstanding evidence that: field was brightly illuminated, crowds were noisy, traffic was heavy, field was dusty, some children used foul language, balls were hit into neighboring yards thereby damaging lawns and flowers, and games were played after 10 p.m.; nuisance, if any, was private and arose out of particular manner of operation of legitimate enterprise and lower courts should have done no more than point out nuisance and decree methods calculated to eliminate it. *Kasala v. Kalispell Pee Wee Baseball League*, 151 M 109, 439 P 2d 65.

Sufficiency of Complaint Stating Cause of Action for Nuisance

Sufficiency of complaint against city, as stating cause of action for maintaining a sewer in such a manner as to be a nuisance and to injure the plaintiff. *Murray v. City of Butte*, 35 M 161, 170, 83 P 789.

Complaint in action to enjoin maintenance and operation of storage reservoir, authorized by law and under section 57-104, used for generating electric power, on the ground that it constituted a nuisance by flooding plaintiff's property, did not state a cause of action in the absence of an allegation of negligence. *Jeffers v.*

Montana Power Co., 68 M 114, 137, 217 P 652.

Unlicensed Photographers

Activities of unlicensed photographers could not be enjoined since taking of pictures either with or without a license was not a nuisance. *Montana State Board of Examiners v. Keller*, 120 M 364, 165 P 2d 503, 506.

What Constitutes a Nuisance

Use of water by an upper appropriator in such a way as to carry sand, gravel, and mining debris over land of a lower proprietor, rendering it valueless, constitutes a nuisance, both at common law and under this section. *Chessman v. Hale*, 31 M 577, 584, 79 P 254, 68 LRA 410, 3 Ann Cas 1038, distinguished in 70 M 333, 335, 225 P 802.

Conduct of labor union members and their sympathizers in congregating in large numbers in immediate vicinity of property of a person whom they deem unfair to organized labor, impeding travel on the sidewalk in front of such property, and interfering with the business there carried on, and with the customers at such place, constitutes a nuisance and can be enjoined. *Iverson v. Dilno*, 44 M 270, 273, 119 P 719.

Labor union's peaceful picketing of theater owned by person alleged to be unfair to organized labor was not a nuisance, and injunction was denied. *Empire Theater Co. v. Cloke*, 53 M 183, 195, 163 P 107, LRA 1917L 383.

Railroad which allowed carcass of horse killed by one of its trains to remain on its right of way near a railroad crossing, emitting offensive odors, was liable for damages occasioned by the nuisance, including the frightening of passing teams. *Great Northern Ry. Co. v. Ennis*, 236 Fed 17, 21.

Collateral References

Nuisance—1 et seq., 59 et seq.
60 C.J.S. Nuisances §§ 1, 8 et seq.
39 Am. Jur. 280, Nuisances, § 2.

Effect of delay in seeking equitable relief against nuisance. 6 ALR 1093.

Right to enjoin threatened or anticipated nuisance. 7 ALR 749; 26 ALR 937; 32 ALR 724 and 55 ALR 880.

Pool and billiard room and bowling alley, power to declare a nuisance per se, and right to enjoin their operations. 20 ALR 1182; 29 ALR 41; 53 ALR 149 and 72 ALR 1339.

Agreement or assumption of parties as affecting the question whether nuisance caused by private corporation or individual is permanent or continuous. 27 ALR 61.

- Slaughterhouse as nuisance. 27 ALR 329.
- Amusement park as a nuisance. 33 ALR 725.
- Saw or planing mill as a nuisance. 37 ALR 689.
- "Comfort stations." 42 ALR 891 and 55 ALR 472.
- Circuses, carnivals, and similar itinerant outdoor amusements, injunction against use of property for. 63 ALR 407.
- Spite fences and other spite structures. 133 ALR 691.
- Supermarket, superstore, or public market as a nuisance. 146 ALR 1407.
- Medical clinic as a nuisance. 153 ALR 972.
- Zoning regulation as affecting question of nuisance within zoned area. 166 ALR 659.
- Racing, or betting on races, as nuisance. 166 ALR 1264.
- Defense, "coming to a nuisance," as a defense or operating as an estoppel. 167 ALR 1364.
- Zoning laws prescribing conditions of business or manufacturing designed to avoid nuisance or annoyance. 173 ALR 271.
- Riding academy as nuisance. 174 ALR 755.
- Attracting people in such numbers as to obstruct access to the neighboring premises, as nuisance. 2 ALR 2d 437.
- Casting light on another's premises in connection with sporting events or amusements as a nuisance. 5 ALR 2d 707, 708.
- Coalyard as nuisance. 8 ALR 2d 419.
- Sound amplifiers or loud-speaker broadcasts in streets and other public places, public regulation and prohibition of. 10 ALR 2d 627.
- Destruction of building, judicial determination of whether building constitutes nuisance subject to destruction. 14 ALR 2d 82.
- Animal rendering or bone-boiling plant or business as nuisance. 17 ALR 2d 1269.
- Dogs, birds, or other pets, keeping by tenant as a nuisance. 18 ALR 2d 880.
- Stockyard as a nuisance. 18 ALR 2d 1033.
- Blasting, liability, based on nuisance, for property damage by concussion from. 20 ALR 2d 1406.
- Phonograph, loudspeaker, or other mechanical or electrical device for broadcasting music, advertising, or sales talk from business premises, as nuisance. 23 ALR 2d 1289.
- Dust as nuisance. 24 ALR 2d 194.
- Tourist or trailer camps, motor courts or motels as nuisances. 24 ALR 2d 571.
- Charity, immunity of nongovernmental charity from liability for maintaining nuisance. 25 ALR 2d 52.
- Hospital, immunity from liability for damages for nuisance in operation of hospital by state or governmental unit or agency. 25 ALR 2d 217.
- Private school as nuisance. 27 ALR 2d 1249.
- House-to-house soliciting and peddling without invitation as nuisance. 35 ALR 2d 355 and 77 ALR 2d 1231.
- Pollution of subterranean waters as nuisance. 33 ALR 2d 1285.
- Undertaking establishment as nuisance. 39 ALR 2d 1000.
- Sewage disposal plant as nuisance. 40 ALR 2d 1177.
- Public dances or dance halls as nuisances. 44 ALR 2d 1397.
- Quarries, gravel pits, and the like as nuisances. 47 ALR 2d 490.
- Mufflers or similar noise-preventing devices on motor vehicles, aircraft, or boats, validity of public regulation requiring. 49 ALR 2d 1202.
- Cemetery or burial grounds as nuisance. 50 ALR 2d 1324.
- "Spot zoned" property, use of, as nuisance. 51 ALR 2d 280.
- Public dump as nuisance. 52 ALR 2d 1134.
- Automobile sales lot or used car lot as nuisance. 56 ALR 2d 776.
- Fishing, boating, bathing or the like in inland lake as nuisance. 57 ALR 2d 594.
- Billboards and outdoor advertising as nuisances. 58 ALR 2d 1314.
- Golf course or driving range as a nuisance. 63 ALR 2d 1331.
- Cats, possession of, or manner of keeping as nuisance. 73 ALR 2d 1040.
- Merry-go-round as nuisance. 75 ALR 2d 803.
- Air pollution, validity of regulation of. 78 ALR 2d 1305.
- Water sports, amusements, or exhibitions as nuisance. 80 ALR 2d 1124.
- Double parking of motor vehicle as nuisance. 82 ALR 2d 732.
- Moving of buildings on highways as nuisance. 83 ALR 2d 478.
- Usury, practice of exacting, as nuisance. 83 ALR 2d 848.
- Automobile wrecking yard or place of business as nuisance. 84 ALR 2d 653.
- Oil refinery as a nuisance. 86 ALR 2d 1322.
- Drive-in restaurant or cafe as nuisance. 91 ALR 2d 572.
- Dairy, creamery, or milk distributing plant, as nuisance. 92 ALR 2d 974.
- Swimming pool, private residential swimming pool as nuisance. 92 ALR 2d 1285.
- Drive-in theater or outdoor dramatic or musical entertainment as nuisance. 93 ALR 2d 1171.
- Gas company's liability on theory of nuisance, for personal injury or property damage caused by gas escaping from mains in street. 96 ALR 2d 1084.

Pigs, keeping pigs as a nuisance. 2 ALR 3d 931.

Poultry, keeping poultry as nuisance. 2 ALR 3d 965.

Motorbus or truck terminal as nuisance. 3 ALR 3d 1372.

Electric generating plant or transformer station as nuisance. 4 ALR 3d 902.

Saloons or taverns as nuisance. 5 ALR 3d 989.

Dogs, keeping of dogs as enjoinal nuisance. 11 ALR 3d 1399.

Institution for the punishment or rehabilitation of criminals, delinquents, or alcoholics as enjoinal nuisance. 21 ALR 3d 1058.

Gun club, or shooting gallery or range, as nuisance. 26 ALR 3d 661.

Horses: keeping horses as nuisance. 27 ALR 3d 627.

57-102. (8643) Public nuisance. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

History: En. Sec. 4551, Civ. C. 1895; re-en. Sec. 6163, Rev. C. 1907; re-en. Sec. 2643, R. C. M. 1921. Cal. Civ. C. Sec. 3480. Based on Field Civ. C. Sec. 1950.

Bawdyhouse

A bawdyhouse is a public nuisance under this section. State ex rel. Ford v. Young, 54 M 401, 404, 170 P 947, explained in 129 M 106, 113, 233 P 2d 594.

Chicken-Raising Business

Chicken-raising business was not a public nuisance. McCollum v. Kolokotronis, 131 M 438, 311 P 2d 780, 782.

Obstructing Streets

Under rule that private person may maintain action to abate public nuisance if it causes special or peculiar injury to him, substantial in its nature, complaint by owners of residential property on streets facing a lake, against lumber company which had caused large quantities of lumber to be piled across the street ends and along the lake front between high and low watermark, thus cutting off access to the lake, alleging that defendant's acts made their property less desirable and less valuable for residential purposes, prevented them from reaching the water's edge, etc., stated a cause of action. Fancett v. Dewey Lumber Co., 82 M 250, 259, 266 P 646.

57-103. (8644) Private nuisance. Every nuisance not included in the definition of the last section is private.

History: En. Sec. 4552, Civ. C. 1895; re-en. Sec. 6164, Rev. C. 1907; re-en. Sec. 2644, R. C. M. 1921. Cal. Civ. C. Sec. 3481. Field Civ. C. Sec. 1951.

When Public or Private

A nuisance is common or public where

Possession of Intoxicating Liquor

The possession of a pint of moonshine liquor by defendant in his dwelling house did not constitute a public nuisance where no proof was made showing a single sale or attempted sale; the liquor was discovered by a search of the premises made without information that it was there; and possession of such a small amount of liquor could not endanger the public health, safety, peace or comfort of the whole community or a considerable number of people. City of Bozeman v. Merrell, 81 M 19, 29, 261 P 876.

What Constitutes a Public Nuisance

Under this section, a public nuisance is one which affects an entire neighborhood or community or any considerable number of persons. City of Bozeman v. Merrell, 81 M 19, 29, 261 P 876.

When Public or Private

A nuisance is common or public where it affects rights to which every citizen is entitled; it is private where it affects a single individual or a determinate number of persons in the enjoyment of some private right not common to the public. Gibbs v. Gardner, 107 M 76, 81, 80 P 2d 370.

It affects rights to which every citizen is entitled; it is private where it affects a single individual or a determinate number of persons in the enjoyment of some private right not common to the public. Gibbs v. Gardner, 107 M 76, 81, 80 P 2d 370.

57-104. (8645) What is not deemed a nuisance. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

History: En. Sec. 4553, Civ. C. 1895; re-en. Sec. 6165, Rev. C. 1907; re-en. Sec. 2645, R. C. M. 1921. Cal. Civ. C. Sec. 3432. Field Civ. C. Sec. 1952.

Gambling

Premises wherein punch boards are operated may be abated as a nuisance inasmuch as it constitutes gambling. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141.

Use and Enjoyment of Grant

In grants of authority to municipal corporations, authority to commit a nuisance will not be implied but must be expressed; when use and enjoyment of a legislative grant does not necessarily and naturally create a nuisance, but nuisance results from the method of the use and enjoyment, the grant constitutes no defense. Lennon v. City of Butte, 67 M 101, 106, 214 P 1101.

Waters and Watercourses

A complaint to enjoin the maintenance and operation of a storage reservoir used for generating electric power, on the ground that it constituted a nuisance during the winter months when water was released for power development purposes causing an unnatural fluctuation of several feet in the level of the river below which

caused ice to break and jam flooding plaintiff's property, did not state a cause of action in the absence of an allegation of negligence, the operation of the reservoir being authorized by law. Jeffers v. Montana Power Co., 68 M 114, 139, 217 P 652.

There can be no question but that the irrigation company was expressly authorized to construct and maintain the embankment and grade for the canal by section 15 of article III of the constitution, and section 89-820, in effect since 1895, and "nothing which is done or maintained under express authority of a statute can be deemed a nuisance." Gray v. Cove Irr. Dist., 86 M 562, 566, 284 P 539; Peel v. Chicago, M., St. P. & P. R. Co., 94 M 334, 349, 22 P 2d 617.

Since a railroad is authorized by law to maintain embankments across waterways, and nothing maintained under authority of law can be deemed a nuisance, an embankment constructed and maintained so as not to constitute a nuisance per se may not be held to have been negligently constructed. Heckaman v. Northern Pacific Ry. Co., 93 M 363, 377, 20 P 2d 253.

Collateral References

Nuisance \hookrightarrow 5, 6, 64, 65.
66 C.J.S. Nuisances §§ 9, 17 et seq.

57-105. (8646) Successive owners. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

History: En. Sec. 4554, Civ. C. 1895; re-en. Sec. 6166, Rev. C. 1907; re-en. Sec. 8646, R. C. M. 1921. Cal. Civ. C. Sec. 3483. Field Civ. C. Sec. 1953.

Notice

It is not necessary to give notice to abate to one who continues a nuisance before bringing suit for damages. Watson v. Colusa-Parrot Mining & Smelting Co., 31 M 513, 524, 79 P 14.

Nuisance Created by Structure

This section is limited to nuisances which are created by erection of a structure and which may be termed nuisances per se, and does not comprehend a nuisance arising because of manner of using property or a structure whose mere creation did not constitute a nuisance. Midland Empire Packing Co. v. Yale Oil Corp., 119 M 36, 169 P 2d 762, 734.

Oil Refinery

An oil refinery is not harmful per se, whether it is a nuisance in a given case depending upon how it is operated, and hence former owner and operator of oil refinery was not liable for damage to adjacent slaughterhouse premises after sale of refinery to another company, though similar injury to slaughterhouse occurred while refinery was under operation of former owner. Midland Empire Packing Co. v. Yale Oil Corp., 119 M 36, 169 P 2d 732, 734.

Collateral References

Nuisance \hookrightarrow 10, 70.
66 C.J.S. Nuisances §§ 85 et seq.
39 Am. Jur. 313-322, Nuisances, § 32-40.

Liability of purchaser of premises for nuisance thereon created by predecessor. 14 ALR 1094.

57-106. (8647) Abatement does not preclude action. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

History: En. Sec. 4555, Civ. C. 1895; re-en. Sec. 6167, Rev. C. 1907; re-en. Sec. 8647, R. C. M. 1921. Cal. Civ. C. Sec. 3484. Field Civ. C. Sec. 1954.

Action against City

Where city maintained private nuisance which a party abated at his own expense, he might recover from city such damages as he sustained by reason of the mainte-

nance of such nuisance, and could recover the necessary expense in abating it as an element of such damages. *Murray v. City of Butte*, 35 M 161, 163, 88 P 789.

Collateral References

Nuisance—41-43.

66 C.J.S. Nuisances § 139.

39 Am. Jur. 395, Nuisances, § 134.

57-107. (8648) Lapse of time does not legalize. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

History: En. Sec. 4570, Civ. C. 1895; re-en. Sec. 6168, Rev. C. 1907; re-en. Sec. 8648, R. C. M. 1921. Cal. Civ. C. Sec. 3490. Field Civ. C. Sec. 1955.

Collateral References

Nuisance—11-17, 66, 73.

66 C.J.S. Nuisances §§ 91, 92.

57-108. (8649) Abatement. The remedies against a public nuisance are:

1. Indictment or information;
2. A civil action; or,
3. Abatement.

History: En. Sec. 4571, Civ. C. 1895; re-en. Sec. 6169, Rev. C. 1907; re-en. Sec. 8649, R. C. M. 1921. Cal. Civ. C. Sec. 3491. Based on Field Civ. C. Sec. 1956.

Operation and Effect

The attorney general has power, by injunction, to obtain the suppression of a bawdyhouse as a nuisance. *State ex rel. Ford v. Young*, 51 M 401, 404, 170 P 917, explained in 129 M 106, 113, 283 P 2d 594.

Collateral References

Nuisance—18-58, 71-96.

66 C.J.S. Nuisances §§ 76-89, 102-179.

39 Am. Jur. 371, Nuisances, § 117 et seq.

Constitutionality of statutes conferring on chancery courts power to abate public nuisances. 5 ALR 1474; 22 ALR 542 and 75 ALR 1298.

Effect of delay in seeking equitable relief against nuisance. 6 ALR 1098.

Right to enjoin threatened or anticipated nuisance. 7 ALR 749; 26 ALR 937; 32 ALR 724 and 55 ALR 880.

Necessity of knowledge by owner of real estate of a nuisance maintained thereon by another to subject him to the operation of a statute providing for the abatement of nuisances, or prescribing a pecuniary penalty therefor. 12 ALR 431 and 121 ALR 642.

Comparative injury doctrine in suit to enjoin nuisance. 61 ALR 924.

Venue of suit to enjoin nuisance. 7 ALR 2d 481.

Tenant's action for damages against stranger for nuisance to health and comfort. 12 ALR 2d 1228.

Joinder, in injunction action to restrain or abate nuisance, of persons contributing thereto through separate and independent acts. 45 ALR 2d 1284.

Life tenant's right of action for injury or damage to property. 49 ALR 2d 1117.

Contributory negligence or assumption of risk as defense to action for damages for nuisance—modern views. 73 ALR 2d 1378.

57-109. (8650) How regulated. The remedy by indictment or information is regulated by Title 94.

History: En. Sec. 4572, Civ. C. 1895; re-en. Sec. 6170, Rev. C. 1907; re-en. Sec. 8650, R. C. M. 1921. Cal. Civ. C. Sec. 3492.

Collateral References

Nuisance—89 et seq.

66 C.J.S. Nuisances § 159 et seq.

39 Am. Jur. 449-454, Nuisances, §§ 178-182.

57-110. (8651) Action for public nuisance, when private person may maintain. A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

History: En. Sec. 4573, Civ. C. 1895; re-en. Sec. 6171, Rev. C. 1907; re-en. Sec. 8651, R. C. M. 1921. Cal. Civ. C. Sec. 3493. Field Civ. C. Sec. 1958.

Chicken-Raising Business

Chicken-raising business did not constitute a nuisance where defendants kept their property clean and conducted their enterprise in a reasonable and proper manner, none of structures or chickens or use thereof had damaged the plaintiff or the neighborhood, and structures did not constitute a fire hazard. *McCollum v. Kolokotronis*, 131 M 438, 311 P 2d 780, 783.

Obstructing Streets

Complaint by owners of residential property on streets facing a lake, against a lumber company which had caused large quantities of lumber to be piled across the street ends and along the lake front between high and low watermark, thus cutting off access to the lake, alleging that defendant's acts made their property less desirable and less valuable for residential purposes, prevented them from reaching

the water's edge, etc., stated a cause of action. *Faucett v. Dewey Lumber Co.*, 82 M 250, 259, 266 P 616.

Operation and Effect

Since private person may maintain action for public nuisance if it is specially injurious to himself, fact that conduct constituted public nuisance did not defeat right to injunction. *Iverson v. Dilno*, 44 M 270, 276, 119 P 719.

Special Damage

Where owner of tourist camp sought to have chicken-raising business on nearby property declared a public nuisance and abated, it was incumbent upon the owner to prove special damage, in other words, damage distinct from that unto the public at large. *McCollum v. Kolokotronis*, 131 M 438, 311 P 2d 780, 783.

Collateral References

Nuisance—71-76.

66 C.J.S. Nuisances § 78 et seq.

39 Am. Jur. 378-388, Nuisances, §§ 124-127.

57-111. (8652) Public nuisance—how abated. A public nuisance may be abated by any public body or officer authorized thereto by law.

History: En. Sec. 4574, Civ. C. 1895; re-en. Sec. 6172, Rev. C. 1907; re-en. Sec. 8652, R. C. M. 1921. Cal. Civ. C. Sec. 3494. Field Civ. C. Sec. 1959.

Cross-References.

Abandoned horses on public range, sec. 46-1502.

Alcoholic beverage bottle clubs, sec. 4-173.

Beer Act violations, sec. 4-345.

Board of health, powers, sec. 69-4509.

Buildings constituting nuisance, sec. 94-1001 et seq.

City and town councils, power to define and abate nuisances, sec. 11-935.

Criminal nuisance, secs. 94-1001 to 94-1011.

Dilapidated buildings, sec. 82-1219.

Encroachments on highways, sec. 32-4408.

Fallen wire fencing, sec. 46-1404.

Gambling apparatus, sec. 94-2409.

Liquor, unlawful sale, sec. 4-239.

Male equine animals running at large, sec. 46-1703.

Mausoleums or columbariums erected in violation of act, sec. 9-1013.

Noxious weeds and seed, secs. 16-1701, 16-1702.

Prostitution, gambling, opium use, buildings where such takes place, sec. 94-1002.

Smoke as nuisance, secs. 11-2504 to 11-2511.

Unsanitary public buildings, sec. 69-4118.

Collateral References

Nuisance—77-88.

66 C.J.S. Nuisances § 108.

39 Am. Jur., 408-470, Nuisances, §§ 146-193.

Constitutionality of statute conferring on chancery courts power to abate public nuisances. 5 ALR 1474; 22 ALR 542 and 75 ALR 1298.

Liability of municipality for damages or compensation for abating as a nuisance what is not in fact such. 46 ALR 362.

Right, as between state and county or municipality, to maintain action to abate a public nuisance in a street or highway. 65 ALR 699.

Failure of police officer to suppress bawdyhouse as conduct contemplated by statutes which makes neglect of duty by public officer or employee a punishable offense. 134 ALR 1250.

Venue of suit to enjoin nuisance. 7 ALR 2d 481.

Constitutional rights of owners as against destruction of building by public authorities. 14 ALR 2d 73.

Power of municipal corporation to declare stockyards to be nuisances. 18 ALR 2d 1039.

Tourist or trailer camps, motor courts or motels as nuisances subject to abatement. 22 ALR 2d 801.

Joinder, in injunction action to restrain or abate nuisance, of persons contributing

thereto through separate and independent acts. 45 ALR 2d 1234.

Municipal power to abate billboards and outdoor advertising as nuisances. 53 ALR 2d 1314.

57-112. (8653) How abated by persons. Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing that constitutes the same, without committing a breach of the peace or doing unnecessary injury.

History: En. Sec. 4575, Civ. C. 1895; re-en. Sec. 6173, Rev. C. 1907; re-en. Sec. 8653, R. C. M. 1921. Cal. Civ. C. Sec. 3495. Field Civ. C. Sec. 1960.

Operation and Effect

The right given a person by this section to abate a nuisance which is especially injurious to him, may be exercised "only under those circumstances which necessity indulges in cases of extremity or great emergency wherein the ordinary remedy by legal proceedings is ineffectual." *Quong v. McEvoy*, 70 M 99, 104, 224 P 266.

In absence of provision in lease requiring tenant to keep premises in condition fit for occupation, landlord has duty to do

so, and where by his failure in that respect a nuisance is created, its presence is not a justification for evicting the tenant on theory that the nuisance is thereby being abated. *Quong v. McEvoy*, 70 M 99, 104, 224 P 266.

Collateral References

Nuisance—74.

66 C.J.S. Nuisances § 106.

39 Am. Jur. 468, Nuisances, § 192.

Threatened or anticipated nuisance, right to enjoin. 7 ALR 749; 26 ALR 937; 32 ALR 724 and 55 ALR 880.

Comparative injury doctrine in suit to enjoin nuisance. 61 ALR 924.

57-113. (8654) Remedies for private nuisance. The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement.

History: En. Sec. 4590, Civ. C. 1895; re-en. Sec. 6174, Rev. C. 1907; re-en. Sec. 8654, R. C. M. 1921. Cal. Civ. C. Sec. 3501. Field Civ. C. Sec. 1961.

Injunction to Abate Private Nuisance—Action within Reasonable Time

One seeking to abate a private nuisance must act within reasonable time, since court of equity will refuse its aid where the complainant has slept upon his rights for a considerable time by acquiescing in the alleged nuisance. *Gibbs v. Gardner*, 107 M 76, 82, 80 P 2d 370.

Maintenance of Headgate in Ditch

In action to enjoin owner of water right in ditch from operating a headgate in the ditch in an unlawful manner, and to abate a nuisance resulting therefrom, owner had acquired a prescriptive right in headgate's use by virtue of his use of headgate in

like manner since 1911, and plaintiff lost his right to relief through laches. *Gibbs v. Gardner*, 107 M 76, 82, 80 P 2d 370.

Collateral References

Nuisance—18 et seq.

66 C.J.S. Nuisances § 102.

Tenant's action for damages against stranger for nuisance to health and comfort. 12 ALR 2d 1223.

Expense incurred by injured party in remedying temporary nuisance or in preventing injury as element of damages recoverable. 41 ALR 2d 1064.

Life tenant's right of action for injury or damage to property. 49 ALR 2d 1117.

Contributory negligence or assumption of risk as defense to action for damages for nuisance—modern views. 73 ALR 2d 1378.

57-114. (8655) Abatement—when allowed. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury.

History: En. Sec. 4591, Civ. C. 1895; re-en. Sec. 6175, Rev. C. 1907; re-en. Sec. 8655, R. C. M. 1921. Cal. Civ. C. Sec. 3502. Field Civ. C. Sec. 1962.

Operation and Effect

Complaint alleging facts sufficient to show that sewer was a nuisance, that it was maintained by defendant city to

plaintiff's detriment, that plaintiff was compelled to abate it and that amount expended by him was reasonable stated cause of action for recovery of expenditures; second count seeking recovery of property damage was insufficient. *Murray v. City of Butte*, 35 M 161, 163, 88 P 789.

Collateral References

Nuisance \Rightarrow 20.

66 C.J.S. Nuisances § 105.

39 Am. Jur. 467, Nuisances, § 191.

57-115. (8656) When notice is required. Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

History: En. Sec. 4592, Civ. C. 1895; re-en. Sec. 6176, Rev. C. 1907; re-en. Sec. 8656, R. C. M. 1921. Cal. Civ. C. Sec. 3503. Field Civ. C. Sec. 1963.

Reasonable Notice

There can be no question but that, in the ordinary case of this nature, a five- to ten-day notice given a local resident would be "reasonable"; it is the usual time fixed

in orders to show cause and the only requirement in this state as to notice for the abatement of any nuisance is that the notice be reasonable. *State ex rel. Brooks v. Cook*, 84 M 478, 489, 276 P 958.

Collateral References

Nuisance \Rightarrow 20.

66 C.J.S. Nuisances § 107.

39 Am. Jur. 319-323, Nuisances, §§ 39-42.

CHAPTER 39

URBAN RENEWAL LAW

- Section 11-3901. Definitions.
 11-3902. Findings and declarations of necessity.
 11-3903. Encouragement of private enterprise.
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 11-3905. Finding of necessity by local governing body.
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 11-3914. Title of purchaser.
 11-3915. Exercise of powers in carrying out urban renewal project.
 11-3916. Urban renewal agency.
 11-3917. Prohibition against discrimination.
 11-3918. Interested public officials, commissioners, or employees.
 11-3919. Separability—act controlling.
 11-3920. Short title.

11-3901. Definitions. The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning [is] clearly indicated by the context: 1973 SUPPLEMENT

(a) "Agency" or "urban renewal agency" shall mean a public agency created by section 11-3916.

(b) "Blighted area" shall mean an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age obsolescence of buildings or improvements, whether residential or nonresidential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate or mixed uses of land or buildings; high density of population and overcrowding; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime; substantially impairs or arrests the sound growth of the city or its environs, retards the provision of housing accommodations or constitutes an economic or social liability, and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, and morals in its present condition and use.

(c) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(d) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(e) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(f) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(g) "Mayor" shall mean the chief executive of a city or town.

(h) "Municipality" shall mean any incorporated city or town in the state.

(i) "Obligee" shall include any bondholder, agent or trustees for any bondholders, or lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(j) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or school district; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(k) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(l) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(m) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(n) "Redevelopment" may include (1) acquisition of a blighted area or portion thereof; (2) demolition and removal of buildings and improvements; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act in accordance with the urban renewal plan, and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(o) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof, in accordance with an urban renewal plan, by (1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act; and (4) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(p) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(q) "Urban renewal plan" means a plan, as it exists from time to time for one or more urban renewal areas or for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate, on a yearly basis or otherwise, such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

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(r) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight, and may involve redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

(s) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality shall elect to undertake activities on an annual increment basis. In the event of such election the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with section 11-3906 of this act. Such activity year shall relate to the budget year of the municipality.

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History: En. Sec. 1, Ch. 195, L. 1959.

Collateral References

Health 11, 32.
39 C.J.S. Health § 22 (c).
42 Am. Jur. 779, Public Housing Laws,
§§ 2, 4, 7.

Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 130 ALR 1069; 172 ALR 966.

Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise, 44 ALR 2d 1414.

Amendments

The 1969 amendment, in subdivision (q), inserted "for one or more urban renewal areas or" after "from time to time" and in item (2), "on a yearly basis or otherwise" after "sufficiently complete to indicate"; and added subdivision (s).

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History: En. Sec. 1, Ch. 195, L. 1959; and. Sec. 1, Ch. 210, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "is" in the introductory paragraph.

11-3902. Findings and declarations of necessity. It is hereby found and declared that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state exist in municipalities of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime and depreciation of property values, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services, and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of rehabilitation in such a manner that the con-

ditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

History: En. Sec. 2, Ch. 195, L. 1959.

11-3903. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this act, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this act, including the formulation of a workable program, the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

History: En. Sec. 3, Ch. 195, L. 1959.

11-3904. Workable program. A municipality for the purposes of this act may formulate a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, blighted areas, to encourage needed urban rehabilitation, to provide for the redevelopment of such areas, or to undertake such of the aforesaid activities, or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for; the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of blighted areas or portions thereof.

History: En. Sec. 4, Ch. 195, L. 1959.

11-3905. Finding of necessity by local governing body. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this act until after its local governing body shall have adopted a resolution finding that: (1) one or more blighted areas exist in such municipality; and (2) the rehabilitation, redevelopment, or a combination

thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality.

History: En. Sec. 5, Ch. 195, L. 1959;
amd. Sec. 1, Ch. 28, L. 1965.

11-3906. Preparation and approval of urban renewal projects and urban renewal plans. (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose, and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

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(b) The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty (60) days after receipt of it. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said sixty (60) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof. Such notice shall be given by publication once each week for two consecutive weeks not less than ten (10) nor more than thirty (30) days prior to the date of the hearing in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing not less than ten (10) days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project if it finds that (1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project; (2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole; (3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (4) that a sound and adequate financial program exists for the financing of said project.

Provided, that the local governing body must find the urban renewal project area to be blighted area as defined in section 11-3901.

(e) An urban renewal project plan may be modified at any time by the local governing body: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest may be entitled to assert.

(f) Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

(g) If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (e), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality in accordance with the provisions of sections 11-2303 to 11-2310, inclusive, at the same election and shall be approved by a majority of those qualified electors voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by section 11-3907 which are necessary or proper to complete such project in accordance with the approved plan and any modification thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

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(h) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. Such activities need not be limited to contiguous areas; however, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this act. The yearly activities shall constitute a part of the urban renewal plan and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with section 11-3906, subsection (g).

History: En. Sec. 6, Ch. 195, L. 1959; and, Sec. 2, Ch. 38, L. 1965; and, Sec. 2, Ch. 210, L. 1969; and, Sec. 18, Ch. 158, L. 1971.

Amendments

The 1969 amendment made a minor change in punctuation in subsection (a); deleted the former last sentence of subsection (g) which read: "Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such munici-

pality and shall be approved by a majority of those taxpayers voting on such question"; and added subsection (h).

The 1971 amendment substituted "qualified electors" for "taxpayers" in two places in the first sentence of subsection (g).

Effective Date

Section 19 of Ch. 158, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

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11-3907. Powers. Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act, and to disseminate blight clearance and urban renewal information.

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets or roads in connection with an urban renewal project; to install, construct, and reconstruct, streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(c) Within the municipality, to enter upon any building or property in any urban renewal area, in order to make surveys and appraisals, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property and such personal property as may be necessary for the administration of the provisions herein contained, together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(d) To invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 11-3910 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

(e) To borrow money and to apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to enter into and carry out contracts in connection therewith. A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act.

(f) Within the municipality, to make or have made all plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation: (1) a comprehensive plan or parts thereof for the locality as a whole, (2) urban renewal plans, (3) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (4) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (5) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of, funds from the federal government for such purposes.

(g) To prepare plans for the relocation of families displaced from an urban renewal area, and to make relocation payments and to co-ordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

(h) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and in accordance with state law; (1) levy taxes and assessments for such purposes; (2) acquire land by negotiation and/or eminent domain; (3) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; (4) plan or replan, zone or rezone any part of the municipality; (5) adopt annual budgets for the operation of an urban renewal agency, department, or offices vested with urban renewal project powers under section 11-3915; (6) enter into agreements with such agencies or departments (which agreements may extend over any period) respecting action to be taken by such municipality pursuant to any of the powers granted by this act.

(i) Within the municipality, to organize, co-ordinate, and direct the administration of the provisions of this act as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(j) To plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this act for carrying out and planning urban renewal projects.

(k) To exercise all or any part or combination of powers herein granted.

(l) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959; and, Sec. 3, Ch. 210, L. 1969.

sion (i) and designated former subdivisions (j) and (k) as new subdivisions (k) and (l).

Amendments

The 1969 amendment inserted subdivi-

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11-3908. Eminent domain. A municipality shall have the right to acquire by condemnation, any interest in real property, which it may deem necessary for an urban renewal project under this act after the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this act.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof.

History: En. Sec. 8, Ch. 195, L. 1959.

Cross-Reference

Eminent Domain, sec. 93-9901 et seq.

11-3909. Disposal of property in urban renewal area. (a) A municipality may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, in an urban renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets, and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this act. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account, and give consideration to, the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas. The municipality in any

instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality shall, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite proposals from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out. The municipality may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

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(c) A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. Provided, however, that the municipality may, after a public hearing, extend the time for a period not to exceed three years.

History: En. Sec. 9, Ch. 195, L. 1959.

11-3910. Issuance of bonds. (a) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest

upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this act; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this act.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall be subject only to the provisions of the Uniform Commercial Code. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

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(d) Such bonds may be sold at not less than ninety-eight per cent (98%) of par at public or private sale, or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight per cent (98%) of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

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(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

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(g) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

History: En. Sec. 10, Ch. 195, L. 1959;
amd. Sec. 11-109, Ch. 264, L. 1963.

11-3911. Bonds as legal investments. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this act: provided, that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of, and the interest on, such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: En. Sec. 11, Ch. 195, L. 1959.

11-3912. Property exempt from taxes and from levy and sale by virtue of an execution. (a) All property of a municipality, including funds, owned or held by it for the purposes of this act, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against

a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to, or limit the right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this act by a municipality on its rents, fees, grants, or revenues from urban renewal projects.

(b) The property of a municipality, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: provided, that such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

History: En. Sec. 12, Ch. 195, L. 1959.

11-3913. Co-operation by public bodies. (a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this act, may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or other rights or privileges therein to a municipality; (2) incur the entire expense of any public improvements made by such public body, in exercising the powers granted in this section; (3) do any and all things necessary to aid or co-operate in the planning or carrying out of an urban renewal plan; (4) lend, grant, or contribute funds to a municipality; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project, and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or rezone any part of the urban renewal area; and provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(b) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of section 11-3909 (b).

(c) For the purpose of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, such municipality, in addition to any authority to issue bonds pursuant to section 11-3910, may issue and sell its general obligation bonds. Any bonds issued pursuant to this section shall be issued in the

manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

History: En. Sec. 13, Ch. 195, L. 1959.

11-3914. Title of purchaser. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this act, shall be conclusively presumed to have been executed in compliance with the provisions of this act in so far as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History: En. Sec. 14, Ch. 195, L. 1959.

11-3915. Exercise of powers in carrying out urban renewal project.
(a) A municipality may itself exercise its urban renewal project powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency (created by section 11-3916) or a department or other officers of the municipality as they are authorized to exercise under this act.

(b) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(1) To formulate and co-ordinate a workable program as specified in section 11-3904.

(2) To prepare urban renewal plans.

(3) To prepare recommended modifications to an urban renewal project plan.

(4) To undertake and carry out urban renewal projects as required by the local governing body.

(5) To make and execute contracts as specified in section 11-3907, with the exception of contracts for the purchase or sale of real or personal property.

(6) To disseminate blight clearance and urban renewal information.

(7) To exercise the powers prescribed by section 11-3907 (b), except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body.

(8) To enter any building or property, in any urban renewal area, in order to make surveys and appraisals in the manner specified in section 11-3907 (c).

(9) To improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area.

(10) To insure real or personal property as provided in section 11-3907 (c).

(11) To effectuate the plans provided for in section 11-3907 (f).

(12) To prepare plans for the relocation of families displaced from an urban renewal area and to co-ordinate public and private agencies in such relocation.

(13) To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

(14) To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

(15) To negotiate for the acquisition of land.

(16) To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, way, or other places and to make recommendations with respect thereto.

(17) To organize, co-ordinate, and direct the administration of the provisions of this act.

(18) To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in this act that are not included in subsection (b) of this section as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof, may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

History: En. Sec. 15, Ch. 195, L. 1959.

11-3916. Urban renewal agency. (a) When a municipality has made the finding prescribed in section 11-3905 and has elected to have the urban renewal project powers, as specified in section 11-3915, exercised, such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate, or the legislative body of a city may create an urban renewal agency in such municipality to be known as a public body corporate to which such powers may be assigned.

(b) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of five commissioners. The initial membership shall consist of one commissioner appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers and responsibilities of an urban renewal agency shall be

exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the municipality.

The urban renewal agency or department or officers exercising urban renewal project powers shall be staffed with the necessary technical experts and such other agents and employees, permanent and temporary, as it may require. An agency authorized to transact business and exercise powers under this act shall file, with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

(d) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed.

History: En. Sec. 16, Ch. 195, L. 1959.

11-3917. Prohibition against discrimination. For all of the purposes of this act, no person shall, because of race, creed, color, or national origin, be subjected to any discrimination.

History: En. Sec. 17, Ch. 195, L. 1959.

11-3918. Interested public officials, commissioners, or employees. No public official, or employee of a municipality or urban renewal agency or department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under section 11-3915, shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, department or division head owns or controls, or owned or controlled within two years prior to the date of hearing on the urban renewal project, any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project

powers by the municipality pursuant to the provisions of section 11-3915. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this act shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or offices. Any violation of the provisions of this section shall constitute misconduct in office.

History: En. Sec. 18, Ch. 195, L. 1959.

11-3919. Separability — act controlling. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall be not affected thereby.

In so far as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

History: En. Sec. 19, Ch. 195, L. 1959.

11-3920. Short title. This act shall be known and may be cited as the "Urban Renewal Law."

History: En. Sec. 20, Ch. 195, L. 1959.

11-3921. Allocation of taxes. Any urban renewal plan as defined in section 11-3901, R. C. M. 1947, may contain a provision or be amended to contain a provision that taxes, if any, levied on taxable property in an urban renewal area each year by or for the benefit of any city which has the power to levy a tax, shall, after the effective date of such provision, be allocated as follows:

(1) that portion of the taxes produced by the levies for such city upon the total sum of the assessed value of the taxable property in the urban renewal area as shown upon the assessment roll used in connection with the taxation of such property for such city last equalized prior to the effective date of the urban renewal plan shall be allocated to and when collected shall be paid into the funds of such city as taxes by or for such city on all other property are paid; and

(2) that portion of the levied taxes for such city each year in excess of such amount shall be allocated to and when collected, shall be paid into a special fund held by the city treasurer to pay the principal and interest on bonds, the issue of which is authorized by section 11-3910, R. C. M. 1947.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974.

11-3922. Time when act applies. The provisions of subsection 1 of section 1 [11-3921] of this act shall first apply to the assessment roll next following the enactment or amendment to the urban renewal plan authorizing the allocation of funds under this act.

• History: En. 11-3922 by Sec. 2, Ch. 287, L. 1974.

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11-3923. Disposition of unexpended funds. All moneys remaining unexpended from the special fund created by this act after payment of all the principal and interest on such bonds shall be paid into the city's general fund.

History: En. 11-3923 by Sec. 3, Ch. 287, L. 1974.

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11-3924. Maximum term of bonds. No bond for the payment of which the special fund described in section 1 [11-3921] is used may be issued for a longer term than twenty (20) years.

History: En. 11-3924 by Sec. 5, Ch. 287, L. 1974.

11-3925. Use of funds generated by bonds. Money generated by the sale of bonds for which funds are allocated pursuant to section 1 [11-3921] of this act may be used by a city only for improvement or construction of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots, sewers, waterlines or waterways.

History: En. 11-3925 by Sec. 7, Ch. 287, L. 1974.

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(4) To sell and convey any real or personal property acquired as provided by subdivision (1) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county; provided, that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

No municipality or county shall have the power to operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, nor shall they have any power to acquire any such project, or any part thereof, by condemnation.

History: En. Sec. 2, Ch. 51, L. 1965.

Constitutionality

Provision for issuance of revenue bonds under this act does not violate Montana constitution article XIII, section 1, since it is done for a public purpose, despite the fact that certain individual associations or corporations may benefit from the legislation. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

Judicial Review

Where project was entirely within county, court would not consider hypothetical conflict between section 16-101 and provision in this section allowing project partially without county. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

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11-4103. Limited obligation bonds—form and contents—sale—negotiability. (1) All bonds issued by a municipality or county under the authority of this act shall be limited obligations of the municipality or county. Bonds and interest coupons, issued under the authority of this act, shall not constitute nor give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds.

(2) The bonds, referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in registered or bearer form either as to principal or interest or both, (e) be payable in such installments and at such time or times not exceeding thirty (30) years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality or county and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds, issued under the authority of this act, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality or county may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the projects.

(4) All bonds, issued under the authority of this act, and all interest coupons applicable thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source.

(5) Prior to the issuance of any bonds, under the authority of this act, by any municipality or county, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week for three (3) consecutive weeks prior to the date set for the hearing, the governing body shall publish in a newspaper of general circulation in the municipality or county a notice of the time and place of the hearing. The governing body shall not approve the bonds as provided in this act unless it appears, after the public hearing, that such approval is in the public interest of the municipality or county.

1974 SUPPLEME.

History: Amd. Sec. 1, Ch. 304, L. 1974.

History: En. Sec. 3, Ch. 51, L. 1965.

Collateral References

Municipal Corporations 265-267, 278,

285-286, 457-463, 858-861, 866-867, 869, 872-877.

64 C.J.S. Municipal Corporations §§ 1835, 1842, 1902, 1905, 1909, 1911-1912.

11-4103. Limited obligation bonds—form and contents, etc.

Constitutionality

This section does not violate Montana constitution article XIII, section 5, since it provides for revenue bonds and does not

create debt or liability within the meaning of article XIII, section 5. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

CHAPTER 41

INDUSTRIAL DEVELOPMENT PROJECTS

Section 11-4101.	Definition of terms.
11-4102.	General municipal and county powers.
11-4103.	Limited obligation bonds—form and contents—sale—negotiability.
11-4104.	Provisions for security of bondholders.
11-4105.	Determination of costs—terms of lease.
11-4106.	Refunding of bonds.
11-4107.	Use of proceeds of bond sales.
11-4108.	Taxation of projects.
11-4109.	Powers cumulative.
11-4110.	Advice and information by state planning board.

11-4101. Definition of terms. As used in this act, unless the context otherwise requires: (1) Municipality shall mean any incorporated city or town in the state;

(2) Project shall mean any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing or industrial enterprises, recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities;

(3) Governing body shall mean the board or body in which the general legislative powers of the municipality or county are vested; and

(4) Mortgage shall mean a mortgage or a mortgage and deed of trust, or other security device.

History: En. Sec. 1, Ch. 51, L. 1965.

History: En. Sec. 1, Ch. 51, L. 1965; amd. Sec. 1, Ch. 50, L. 1969; amd. Sec. 1, Ch. 386, L. 1971.

vided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Amendments

The 1969 amendment added "recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities" at the end of subdivision (2).

The 1971 amendment inserted "commercial" in subdivision (2).

Effective Date

Section 2 of Ch. 50, Laws 1969 pro-

Special Purpose Law

This act is designed for special purpose and prevails over and is not limited by general legislation that county not make lease longer than ten years (16-1030), that county not sell land except at public auction (16-1029), or that county not contract for construction except on public bidding (16-1803). *Pickens v. Missoula County*, 155 M 258, 470 P 2d 287.

1973 SUPPLEMENT

11-4102. General municipal and county powers. In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers: (1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within or partially without the municipality or county;

(2) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this act;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects, and to secure the payment of such bonds as provided in this act, which revenue bonds may be issued in two (2) or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this act; and

11-4104. Provisions for security of bondholders. (1) The principal of and interest on any bonds issued under the authority of this act (a) shall be secured by a pledge of the revenues out of which such bonds

shall be made payable, (b) may be secured by a mortgage covering all or any part of the project, and (c) may be secured by a pledge of the lease of such project, or (d) may be secured by such other security device as may be deemed most advantageous by the issuing authority.

(2) The proceedings, under which the bonds are authorized to be issued under the provisions of this act, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any project covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such project, (c) the maintenance and insurance of such project, (d) the creation and maintenance of special funds from the revenues of such project, and (e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this act; provided, that in making any such agreements or provisions a municipality or county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this act and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage, made under the provisions of this act, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

History: En. Sec. 4, Ch. 51, L. 1965.

11-4105. Determination of costs—terms of lease. (1) Prior to the leasing of any project, the governing body must determine and find the following: The amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project; the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes;

and, unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

(2) The determinations and findings of the governing body, required to be made by subsection (1) of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of the bonds authorized by this act, the municipality or county shall lease the project to a lessee or lessees under an agreement conditioned upon completion of the project and providing for payment to the municipality or county of such rentals as, upon the basis of such determinations and findings, will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the project, (b) to pay the taxes on the project, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured. Subject to the limitations of this act, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities and counties, such lease may contain an option for the lessees to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

History: En. Sec. 5, Ch. 51, L. 1965.

11-4106. Refunding of bonds. Any bonds issued under the provisions of this act and at any time outstanding may at any time and from time to time be refunded by a municipality or county by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith; provided, that an issue of refunding bonds may be combined with an issue of additional revenue bonds on any project when the combined total meets the requirements of subsection (1) of section 11-4105. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. Any refunding bonds issued under the authority of this act shall be subject to the provisions contained in section 11-4103 and may be secured in accordance with the provisions of section 11-4101.

History: En. Sec. 6, Ch. 51, L. 1965.

Compiler's Note

The compiler has substituted the refer

ence to "subsection (1)" for an apparently erroneous reference to "subsection (5)" in the first sentence.

11-4107. Use of proceeds of bond sales. The proceeds from the sale of any bonds issued under authority of this act shall be applied only for the purpose for which the bonds were issued; provided, that any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any project shall be deemed to include the following: The actual cost of acquiring or improving real estate for any project; the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvement; and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding six (6) months after completion of construction.

History: En. Sec. 7, Ch. 51, L. 1965.

11-4107. Use of proceeds of bond sales.

Equipment Acquired

Pollution controls or other equipment useful in industrial project created under this act may be acquired under provisions

of this section from the proceeds of bond sales. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

11-4108. Taxation of projects. Notwithstanding that title to a project may be in a municipality or county, such projects shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances, if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in any year; but such projects shall not be subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in any year; provided, that where personal property owned by a municipality or county is taxed under this section and such personal property taxes are delinquent, levy by distress warrant for collection of such delinquent taxes may only be made on personal property against which such taxes were levied.

History: En. Sec. 8, Ch. 51, L. 1965.

Constitutionality

This section does not violate provisions of Montana constitution article XII, section 2 against taxing property of county or municipality, since county or municipi-

pality has only trust as opposed to beneficial interest, and taxation is based on use of property. *Fickes v. Missoula County* 155 M 258, 470 P 2d 287.

11-4109. Powers cumulative. Neither this act nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state, but shall be construed as cumulative.

History: En. Sec. 9, Ch. 51, L. 1965.

11-4110. Advice and information by department of intergovernmental relations. The department of intergovernmental relations shall furnish advice and information in connection with a project when requested to do so by a county or municipality.

History: Amd. Sec. 56, Ch. 348, L. 1974.

Separability Clause

Section 11 of Ch. 51, Laws 1965 read any section in this act or any part of

any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof."

CHAPTER 10—STRIP MINING AND RECLAMATION

1973 SUPPLEMENT

- Section 50-1034. Short title.
- 50-1035. Policy of state—findings.
- 50-1036. Definitions.
- 50-1037. Orders and rules of board—hearings.
- 50-1038. Administration—functions of department.
- 50-1039. Permit required to engage in strip mining—application for permit—contents—fee—bond.
- 50-1040. Increase or reduction in area—application—fee—bond.
- 50-1041. Prospecting permit—application—contents—reclamation plan—fee—bond.
- 50-1042. Refusal of permit—grounds.
- 50-1043. Reclamation operator—submission and action on plan.
- 50-1044. Area mining permitted—grading and revegetation—release of bond—alternative plan.
- 50-1045. Planting of vegetation following filling of stripped area.
- 50-1046. Time of commencement of reclamation.
- 50-1047. Planting reports—inspection and release of bond.
- 50-1048. Vegetation planted as property of landowner.
- 50-1049. Annual report of reclamation work—map.
- 50-1050. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits.
- 50-1051. Successive operators.
- 50-1052. Receipts paid into special fund—use of fund.
- 50-1053. Funds received by board—reclamation work by board—rehabilitation of unreclaimed lands.
- 50-1054. Reclamation of lands after bond forfeited.
- 50-1055. Mandamus to compel enforcement of law—action for damage to water supply—damage from surface water—other remedies.
- 50-1056. Violation—civil penalty—injunction—misdemeanor.
- 50-1057. Procedure for hearings and appeals.

CHAPTER 12—RECLAMATION OF MINING LANDS

1973 SUPPLEMENT

- Section 50-1201. Legislative observations and finding.
50-1202. Purposes of act.
50-1203. Definitions.
50-1204. Administration—rules and regulations—employment of supervisors.
50-1205. Investigations, research and experiments in reclamation.
50-1206. Co-operation with other agencies—receipt and expenditure of funds.
50-1207. Exploration license and development permit—duration and renewal—requirements.
50-1208. Operating permit—fee—contents of application.
50-1209. Reclamation plan—accomplishment of specific activities.
50-1210. Inspection of mining site—issuance of operating permit—modification of reclamation plan—succession to interest in uncompleted mining operation.
50-1211. Performance bond.
50-1212. Annual report of activities by permittee—annual fee.
50-1213. Inspection to determine compliance with reclamation plan—rectification of deficiencies—board actions to reclaim disturbed lands.
50-1214. Reasons for denial of permit.
50-1215. Resubmission with new reclamation plan.
50-1216. Appeals board—administrative remedies.
50-1217. Judicial review.
50-1218. Appeal to supreme court.
50-1219. Exemption of works performed prior to promulgation of rules and regulations.
50-1220. Exemption of small miners—written agreement—noncompliance a misdemeanor.
50-1221. Information obtained from applications confidential—admissible in hearings or proceedings.
50-1222. Violation a misdemeanor—penalties.
50-1223. Exemption of operations on federal lands.
50-1224. Exemption of sample collectors.

CHAPTER 15--OPEN CUT MINING 1973 SUPPLEMENT

- Section 50-1501. Short title.
- 50-1502. Policy of state.
- 50-1503. Contracts for reclamation of open cut mining land--enforcement of contracts.
- 50-1504. Definitions.
- 50-1505. Administration of act--delegation of functions.
- 50-1506. Powers, duties and functions of commission.
- 50-1507. Contract for reclamation required for large open cut operations.
- 50-1508. Application for contract--contents--issuance of contract--amendment-- withdrawal of land.
- 50-1509. Terms of bond required--deposit in lieu of bond--substitution of bond--forfeiture--release.
- 50-1510. Contract requirements--performance bond--effective period of contract.
- 50-1511. Receipt of funds by commission--reclamation work by commission.
- 50-1512. Inspection of open cut mining by commission.
- 50-1513. Operation without contract as misdemeanor--penalty.
- 50-1514. Reclamation of land on which bond forfeited.
- 50-1515. Commission hearing on final order of commissioner--judicial review.
- 50-1516. Exemption of operations covered by other law.

50-1503. Contracts for reclamation of open cut mining land—enforcement of contracts. The state board of land commissioners is hereby authorized to enter into contracts in the name of the state of Montana with operators which will provide for the reclamation of lands on which open cut mining of bentonite, clay, scoria, phosphate rock, sand and gravel has been or is to be conducted. The state board of land commissioners is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and said board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

History: Amd. Sec. 3, Ch. 209, L. 1974; Amd. Sec. 3, Ch. 235, L. 1974.

50-1504. Definitions. When used in this act, unless a different meaning clearly appears from the context:

(1) * * * [Same as 1973 Supplement.]

(2) "Open cut mining" means the mining of bentonite, clay, scoria, phosphate rock, sand or gravel by removing the overburden lying upon natural deposits thereof, and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of bentonite, clay, scoria, phosphate rock, sand or gravel.

(3) * * * [Same as 1973 Supplement.]

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, clay, scoria, phosphate rock, sand or gravel. "Spoil" is the overburden disturbed from its natural state in the process of open cut mining.

(5) to (16) * * * [Same as 1973 Supplement.]

History: Amd. Sec. 4, Ch. 209, L. 1974; Amd. Sec. 4, Ch. 235, L. 1974.

1974 SUPPLEMENT

CHAPTER 16—STRIP MINE SITING ACT

50-1601. Short title. This act shall be known and may be cited as "The Strip Mine Siting Act."

History: En. 50-1601 by Sec. 1, Ch. 280, L. 1974.

50-1602. Policy of state—purposes of act—exercise of general police power. (1) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the purpose of this act:

(a) to vest in the department the authority to review new strip mine site locations and reclamation plans and either approve or disapprove such locations and plans and to exercise general administration and enforcement of this act; and

(b) to vest in the board the authority to adopt rules, to suspend and revoke permits, and to conduct hearings; and

(c) to satisfy the requirement of article IX, section 2 of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to ensure that adequate information is available on areas proposed for strip mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining.

(3) This act is deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. 50-1602 by Sec. 2, Ch. 280, L. 1974.

50-1603. Definitions. When used in this act, unless a different meaning clearly appears from the context:

(1) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip mine area.

(2) "Board" means the board of land commissioners as provided for in article X, section 4 of the constitution of this state.

(3) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(4) "New strip mine" means a strip mining operation proposed for an area of land which the department determines, because of distance from an existing strip mine operation or because of important differences in topography, soils, wildlife, geologic structure or vegetation from an existing strip mine operation, does not constitute an expansion of an existing operation.

(5) "Preparatory work" means those on-site disturbances, excluding prospecting, associated with the initiation of a new strip mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels and other similar work.

(6) "Strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(7) "Mineral" means mineral as defined in section 50-1036(1), R. C. M. 1947.

(8) "Person" means a person, partnership, corporation, association or other legal entity, or any political subdivision or agency of the state.

(9) "Operator" means a person who intends to operate a new strip mine involving the removal of more than ten thousand (10,000) cubic yards of mineral or overburden.

History: En. 50-1603 by Sec. 3, Ch. 280, L. 1974.

1974 SUPPLEMENT

50-1604. Orders and rules of board—hearings. The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to new strip mines and preparatory work to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

History: En. 50-1604 by Sec. 4, Ch. 280, L. 1974.

50-1605. Administration—functions of department. The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall order the suspension of any permit for failure to comply with this act, any rule adopted under this act or permit issued pursuant to this act;

(3) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(4) shall make investigations and inspections necessary to ensure compliance with this act;

(5) shall encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to new strip mines and reclamation of lands and waters affected by preparatory work;

(6) shall adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

History: En. 50-1605 by Sec. 5, Ch. 280, L. 1974.

50-1606. Permit required to engage in preparatory work. No person may commence preparatory work until the operator shall have first obtained from the department a mine site location permit for a new strip mine, or a permit under chapter 10, Title 50, R. C. M. 1947, if the application for such permit under Title 50 includes an appropriate long-range mining plan acceptable to the department.

History: En. 50-1606 by Sec. 6, Ch. 280, L. 1974.

50-1607. Application for permit—contents—permit authorization—notification—fee—bond. (1) A person desiring a mine site location permit shall file with the department an application which shall contain a reclamation plan for any preparatory work and such other information the department deems necessary to determine if the proposed area to be

affected by the operation is appropriate for the location of a new strip mine. The department may require any information included in, but not limited to, an application for a strip mining permit as required by chapter 10, Title 50, R. C. M. 1947.

(2) A mine site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of one (1) year from the date of issuance and is renewable until the applicant has applied for and received a strip mining permit in accordance with chapter 10, Title 50, R. C. M. 1947.

(3) The department shall notify the applicant within three hundred sixty-five (365) days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine. If the site is approved, the department shall issue the applicant a mine site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within three hundred sixty-five (365) days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

(4) A fee of fifty dollars (\$50) shall be paid before the mine site location permit required in this act may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars (\$200) nor more than ten thousand dollars (\$10,000) for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of five thousand dollars (\$5,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the surface disturbances, the future suitable use of the land involved and the cost of removing or burying facilities, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974.

50-1608. Refusal of permit—grounds. (1) The department may not issue a permit under this act if it finds that a new strip mine is not consistent with the purposes and policies of this act.

(2) The department shall not approve a new strip mining site or preparatory work site for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in section 50-1042, R. C. M. 1947.

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(3) The department shall not issue a permit under this act if a proposed reclamation plan does not meet the requirements of Title 50, chapter 10, R. C. M. 1947.

History: En. 50-1608 by Sec. 8, Ch. 280, L. 1974.

50-1609. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits. (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip mining or mine site location permits held by an operator whose mine site location permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this act.

History: En. 50-1609 by Sec. 9, Ch. 280, L. 1974.

50-1610. Receipts paid into special fund—use of fund. (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the strip mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

History: En. 50-1610 by Sec. 10, Ch. 280, L. 1974.

50-1611. Violation—civil penalty—injunction—misdemeanor. (1) A person or operator who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violation, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000). Each day on which a violation occurs constitutes a separate offense.

History: En. 50-1611 by Sec. 11, Ch. 280, L. 1974.

50-1612. Mandamus to compel enforcement of law. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: En. 50-1612 by Sec. 12, Ch. 280, L. 1974.

50-1613. Procedure for hearings and appeals. All hearing and appeal procedures shall be in accordance with the Montana Administrative Procedure Act.

History: En. 50-1613 by Sec. 13, Ch. 280, L. 1974.

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50-1614. Submitted information may be accepted to meet strip mining permit requirements. The department may choose to accept information submitted under this act to the extent it is applicable and relevant as satisfying the requirements of chapter 10, Title 50.

History: En. 50-1614 by Sec. 14, Ch. 280, L. 1974.

50-1615. Termination of permit. A mine site location permit granted by the department in accordance with the provisions of this act shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine site location permit for which a strip mining permit is granted pursuant to the provisions of chapter 10, Title 50, shall be released from the terms and provisions of the mine site location permit.

History: En. 50-1615 by Sec. 15, Ch. 280, L. 1974.

50-1616. Effect of strip mine siting permit on subsequent strip mining permits. When the department has sufficient information to approve or disapprove a mine site location permit application on either the entire area being considered for a mine site location permit or a portion thereof on the grounds listed in section 50-1042(2) and (4), it shall so state in a written statement to the operator. This decision is binding on the department with regard to strip mining permit applications as specified in chapter 10, Title 50, R. C. M. 1947, unless:

(1) new information is submitted or obtained in compliance with chapter 10, Title 50, which indicates a situation not existing or known at the time of the issuance of a permit under this act;

(2) an application under this act misrepresented information related to the criteria;

(3) a situation develops because of strip mining operations which was not in existence at the time of the issuance of a permit under this act.

History: En. 50-1616 by Sec. 16, Ch. 280, L. 1974.

50-1617. Application to preparatory work on contracts prior to January 1, 1974. The provisions of this act shall not apply where any preparatory work was conducted prior to January 1, 1974, or for which contracts for preparatory work or the sale of Montana coal from a new strip mine by an operator holding a valid permit under section 50-1039 were in existence and proven specific notice thereof given to the department prior to January 1, 1974.

History: En. 50-1617 by Sec. 17, Ch. 280, L. 1974.

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Section 69-3901 to 69-3903. Repealed.

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 - 69-3907. Administration—state board of health.
 - 69-3908. Air pollution control advisory council—members tenure—compensation—meetings—minutes—powers.
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 - 69-3914. Enforcement.
 - 69-3915. Emergency procedure.
 - 69-3916. Variances.
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- 69-3919. Local air pollution control programs.
 - 69-3920. State and federal aid.
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69-3923. Classification of property for taxation.

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STATE BOARD OF HEALTH

- Section 69-4101. State department of health established.
- 69-4102. Definitions.
- 69-4103. State board of health—members—appointment—qualifications—terms.
- 69-4104. State board of health—officers—meetings—quorum—compensation.
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- 69-4106. Functions, powers and duties of state board.
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- 69-4109. Executive officer—powers and duties.
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- 69-4110.1. Comprehensive state health planning powers and duties of department.
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- 69-4115. Information on infant morbidity and mortality—limited use—identity of persons studied confidential.
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- 69-4118. Sanitary inspections of schoolhouses, churches and other facilities for assemblages of persons.

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- 69-4118. Sanitary inspections of schoolhouses, churches, jails and other facilities for assemblages of persons.

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CHAPTER 48

WATER POLLUTION

- Section 69-4801. Public policy of the state.
- 69-4802. Definitions.
- 69-4803. Classification of waters for industrial use.
- 69-4804. Chapter inapplicable to drainage or seepage from artificial bodies of water privately owned—exception.
- 69-4805. Administration of chapter—responsibility of state board of health.
- 69-4806. Pollution unlawful—permits.
- 69-4807. Permits, issuance—plans and specifications required—treatment works required for new or increased sources of sewage, industrial waste, or other waste—revocation of permit for violation.
- 69-4808. Duties of the state board of health.
- 69-4808.1. State board of health to administer state matching funds for construction of water pollution control facilities—limit on funds.
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- 69-4810. State water pollution control council—creation—members, appointment and term of office.
- 69-4811. State water pollution control council—vacancy in office, filling—compensation of members.
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- 69-4813. Powers and duties of the council.
- 69-4814. Hearings by council—notice.
- 69-4815. Rehearing of order—procedure.
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- 69-4818. Injunction to enforce order.
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- Section
- 69-4801. Public policy of the state.
- 69-4802. Definitions.
- 69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned.
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- 69-4807.1. Denial, modification, suspension, and revocation of permit—notice—hearing—effective date.
- 69-4808.2. Duties of board of health.
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- 69-4809.1. Duties of department of health.
- 69-4809.2. Power to inspect and monitor—authority.
- 69-4810. State water pollution advisory council—creation—members, appointment and term of office.
- 69-4811. State water pollution advisory council—vacancy in office, filling—compensation of members.
- 69-4812. State water pollution advisory council—officers—meetings—quorum—designating of deputy by member.
- 69-4813. Powers and duties of the council.
- 69-4814. Hearings by board—notice.
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- 69-4820.1. Additional enforcement remedies.
- 69-4821. Judicial remedies—review by district court—appeal to supreme court.
- 69-4822. Confidentiality of records.
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- 69-4824. *Emergencies.
- 69-4824.1. Additional emergency powers.
- 69-4825. Injunctions.
- 69-4826. Action by other parties.
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CHAPTER 8—UTILITY SITES

Section

- 70-801. Short title.
- 70-802. Policy and legislative findings.
- 70-803. Definitions.
- 70-804. Certificate from board required prior to construction of utility facility.
- 70-805. Surcharge on electric energy producer's license tax—administrative expenses—tax on gasification, liquefaction, uranium enrichment facilities.
- 70-806. Application for certification—filing and contents—fees—use of filing fees—proof of service on municipalities—waiver of time requirement.
- 70-807. Study, evaluation and report on proposed facility—application for amendment of certificate—hearings.
- 70-808. Parties to certification proceeding—waiver by failure to participate.
- 70-809. Record of hearing—procedure—rules of evidence.
- 70-810. Decision of board—findings necessary for certificate—conditions imposed—service of decision on parties.
- 70-811. Opinion issued with decision—contents of certificate—waiver of time requirements—facilities for which certificate required.
- 70-812. Review of denial of certificate by board—procedure.
- 70-813. Jurisdiction of courts restricted.
- 70-814. Annual long-range plan submitted—contents—available to public.
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- 70-816. Environmental factors considered in evaluating long-range plans.
- 70-817. Additional requirements by other governmental agencies not permitted after issuance of certificate—exceptions.

- 70-818. Revocation or suspension of certificate.
- 70-819. Enforcement of act by residents of state—statement of failure to enforce act—
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- 70-820. Adoption of rules—monitoring of facilities.
- 70-821. Penalties for violation of act—civil action by attorney general.
- 70-822. Grants, gifts and funds.
- 70-823. Act supersedes other laws or regulations.

70-801. Short title. This act may be cited as the Montana Utility Siting Act of 1973.

History: En. Sec. 1, Ch. 327, L. 1973.

Title of Act

An act to vest in the department and board of natural resources and conservation the authority to require and review long-range planning by certain utilities, to

give approval to energy generation and conversion plant sites and associated facilities, to require preconstruction certification of such facilities; providing penalties for violation of this act; and providing an effective date.

70-802. Policy and legislative findings. It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

The legislature finds that the construction of additional power and energy conversion facilities may be necessary to meet the increasing need for electricity and other energy, and that such facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that no power or energy conversion facility shall hereafter be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this act.

History: En. Sec. 2, Ch. 327, L. 1973.

70-803. Definitions. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word "department" means the department of natural resources and conservation.

(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

(a) any energy-generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

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(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806(1)] and section 7, subsection (1) [70-807(1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) [70-806(1)], and the six hundred (600) day requirement of section 7, subsection (1) [70-807(1)],

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydrocarbon products from a gasification or liquefaction facility of the size indicated in subsections (a)(ii) and (a)(iii) of this section.

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use or conservation of energy. 1974 SUPPLEMENT

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. The words do include the commencement of eminent domain proceedings under Title 93, chapter 99, R. 1974 SUPPLEMENT

C. M. 1947, for land or rights of way upon which a utility facility may be constructed.

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(b) the fracturing of underground formations by any means, if any such activity is related to the possible future development of an underground utility facility employing geothermal resources, but do not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group, firm, partnership, corporation, co-operative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility.

History: En. Sec. 3, Ch. 327, L. 1973.

History: Amd. Sec. 1, Ch. 231, L. 1974; Amd. Sec. 1, Ch. 286, L. 1974. 1974 SUPPLEMENT

70-804. Certificate from board required prior to construction of utility facility. (1) No person shall commence to construct a utility facility in the state without first having obtained a certificate issued with respect to such facility by the board. Any facility, with respect to which a certificate is required, shall thereafter be constructed, operated and maintained in conformity with such certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this act.

(2) A certificate may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) This act shall not apply to any utility facility over which an agency of the federal government has exclusive jurisdiction.

History: En. Sec. 4, Ch. 327, L. 1973.

70-805. Surcharge on electric energy producer's license tax—administrative expenses—tax on gasification, liquefaction, uranium enrichment facilities. Every "producer" as defined in chapter 16 of Title 84, the electrical energy producers' license tax, shall, in addition to the sum required to be paid by that act, pay an additional twenty-five hundredths percent (0.25%) of the gross amount as shown on the statement which is required by that act, in the same manner and within the time provided by that act. The director of revenue shall report to the state treasurer separately the amount transmitted to the state treasurer which is added to the electrical energy producers' license tax by this section of this act.

The legislature shall appropriate sufficient funds to finance the department's activities in carrying out its duties under this act. The legislature shall provide a tax on gasification, liquefaction and uranium enrichment facilities sufficient to produce an amount of revenue equal to that derived from electrical energy producers under this section.

History: En. Sec. 5, Ch. 327, L. 1973.

70-806. Application for certification—filing and contents—fees—use of filing fees—proof of service on municipalities—waiver of time requirement. (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 70-803(3)(a), 70-803(3)(b)(iv), 70-803(2)(c), and 70-803(3)(d) and at least nine (9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 70-803(3)(b)(iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

(a) a description of the location and of the utility facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the state general fund. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three per cent (3%) of any estimated cost up to one million dollars (\$1,000,000); plus one per cent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000); plus one-half of one per cent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000) and up to one hundred million dollars (\$100,000,000); plus one-quarter of one per cent (0.25%) of any amount of estimated cost over one hundred million (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-tenth of one per cent (0.1%) of any amount of estimated cost over three hundred million dollars (\$300,000,000). It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this act.

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of a certificate shall be in such form and contain such information as the department shall prescribe. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section.

(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

(8) The board may, in its discretion, waive the necessity of filing an application where utility facilities are being relocated pursuant to sections 32-2414 through 32-2416, R. C. M. 1947, and where it is satisfied after an examination of the environmental impact statement filed pursuant to chapter 65 of Title 69, R. C. M. 1947, that such relocation will not significantly affect the environment.

History: Amd. Sec. 1, Ch. 115, L. 1974; Amd. Sec. 2, Ch. 268, L. 1974.

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70-807. Study, evaluation and report on proposed facility—application for amendment of certificate—hearings. (1) Upon receipt of an application complying with section 70-806, the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to section 70-816 of this act. Within six hundred (600) days following receipt of the application for a facility as defined in sections 70-803(3)(a), 70-803(b)(iv), 70-803(3)(c), 70-803(3)(d) and within one hundred eighty (180) days for a facility as defined in sections 70-803(b)(iii) the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 70-816 of this act and the final environmental impact statement.

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The departments of health and environmental sciences, highways, inter-governmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information may include opinions as to the advisability of granting or denying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(2) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an ap-

plication for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(3) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt.

History: En. Sec. 7, Ch. 327, L. 1973.

70-808. Parties to certification proceeding—waiver by failure to participate. (1) The parties to a certification proceeding include:

- (a) the applicant;
- (b) each municipality and government agency entitled to receive service of a copy of the application under subsection (3) of section 6 [70-806 (3)] of this act; and
- (c) any person residing in a municipality entitled to receive service of a copy of the application under subsection (4) of section 6 [70-806 (4)] of this act; any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and

(d) the department.

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing.

History: En. Sec. 8, Ch. 327, L. 1973.

70-809. Record of hearing—procedure—rules of evidence. Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act [82-4201 to 82-4225] shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

History: En. Sec. 9, Ch. 327, L. 1973.

70-810. Decision of board—findings necessary for certificate—conditions imposed—service of decision on parties. (1) The board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the utility facility as the board may deem appropriate. The board may not grant a certificate either as proposed or as modified by the board unless it shall find and determine:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (d) each of the criteria listed in section 16 [70-816] of this act;
- (e) in the case of an electric, gas or liquid transmission line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that such facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that such facilities will serve the interests of utility system economy and reliability;
- (f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;
- (g) that the facility will serve the public interest, convenience and necessity; and
- (h) that duly authorized state air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2). If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, shall have been given reasonable notice of the modification.

(3) A copy of the decision and any opinion issued with the decision shall be served upon each party.

History: En. Sec. 10, Ch. 327, L. 1973.

70-811. Opinion issued with decision—contents of certificate—waiver of time requirements—facilities for which certificate required. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (f) of subsection (1) of section 10 [70-810 (1)(f)] of this act, it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

- (a) An environmental evaluation statement related to the facilities being certified. The statement shall include, but not be limited to, analysis of the following information:

- (i) the environmental impact of the proposed facility;
- (ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;
- (iii) problems and objections raised by other federal and state agencies and interested groups;
- (iv) alternatives to the proposed facilities; and
- (v) a plan for monitoring environmental effects of the proposed facility.

(b) A statement signed by the applicant showing agreement to comply with the requirements of this act and the conditions of the certificate.

(3) The time requirement of section 6 [70-806] and any of the provisions described in sections 7 through 11 [70-807 to 70-811] of this act may be waived by the board, for good cause shown with respect to applications filed before January 1, 1973. Applications for certificates under this subsection (3) must be promptly filed. A certificate is not required under this act for facilities under construction or in operation on January 1, 1973. However, a certificate must be obtained for associated facilities upon which construction has not commenced before January 1, 1973, subject to the waiver provisions of this subsection.

History: En. Sec. 11, Ch. 327, L. 1973.

70-812. Review of denial of certificate by board—procedure. (1) Any party as defined in section 8 [70-808] of this act aggrieved by the final decision of the board on an application for a certificate, may obtain judicial review by the filing of a petition in a state district court of competent jurisdiction within thirty (30) days after the issuance of such final decision. Upon receipt of such petition, the department shall deliver to the court a copy of the written transcript of the record of the proceeding before it and a copy of the board's decision and opinion entered therein which shall constitute the record on judicial review. A copy of such transcript, decision and opinion shall remain on file with the department and shall be available for public inspection.

(2) If a decision is issued after a hearing on an application for a certificate, such decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act [82-1201 to 82-4225].

History: En. Sec. 12, Ch. 327, L. 1973.

70-813. Jurisdiction of courts restricted. Except as expressly set forth in sections 12, 17 and 21 [70-812, 70-817 and 70-821] of this act, no court of this state shall have jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the board under this act or to stop or delay the construction, operation or maintenance of a utility facility except to enforce compliance with this act or the provisions of a certificate issued hereunder pursuant to sections 19 or 21 [70-819 or 70-821] of this act.

History: En. Sec. 13, Ch. 327, L. 1973.

70-814. Annual long-range plan submitted—contents—available to public. (1) Each utility shall furnish annually to the department for its review, a long-range plan for the construction and operation of utility facilities. Such plan shall be submitted on April 1 of each year. The plan shall include the following:

(a) the general location, size and type of all utility facilities to be owned and operated by the utility whose construction is projected to commence during the ensuing ten (10) years, as well as those facilities to be removed from service during the planning period;

(b) a description of efforts by the utility to co-ordinate the plan with other utilities so as to provide a co-ordinated regional plan for meeting the utility needs of the region;

(c) a description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility and explanation of the basis for such projections, and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this act.

(2) The plan shall be made available to the public by the department, and the utility shall be required to give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental science, the department of highways, the department of public service regulation, the department of state lands and the department of intergovernmental relations. Citizen environmental protection and resource planning groups, and other interested persons may obtain a plan by written request and payment therefor.

History: En. Sec. 14, Ch. 327, L. 1973.

70-815. Study of planned facilities included in annual long-range report. If a utility lists and identifies a proposed utility facility in its plan, submitted pursuant to section 14 [70-814] of this act, as one on which construction is proposed to be commenced within the five (5) year period next proceeding submission of the plan, the department shall commence examination and evaluation of the site to determine whether construction of the proposed facility would unduly impair the environmental values in section 16 [70-816] of this act. This study may be continued until such time as a utility files an application for a certificate under section 6 [70-806] of this act. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

History: En. Sec. 15, Ch. 327, L. 1973.

70-816. Environmental factors considered in evaluating long-range plans. In evaluating long-range plans, conducting five-year site reviews, and evaluating applications for certificates of site and facility, the board and department shall give consideration to the following list of environmental factors and may, by regulation, add to the categories of this section:

- (1) Energy needs.
 - (a) Growth in demand and projections of need.
 - (b) Availability and desirability of alternative sources of energy.
 - (c) Availability and desirability of alternative sources of energy in lieu of the proposed facility.
 - (d) Promotional activities of the utility which may have given rise to the need for this facility.
 - (e) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality.
 - (f) Conservation activities which could reduce the need for more energy.
 - (g) Research activities of the utility of new technology available to it which might minimize environmental impact.
- (2) Land-use impacts.
 - (a) Area of land required and ultimate use.
 - (b) Consistency with area-wide state and regional land-use plans.
 - (c) Consistency with existing and projected nearby land use.
 - (d) Alternative uses of the site.
 - (e) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal.
 - (f) Geologic suitability of the site or route.
 - (g) Seismologic characteristics.
 - (h) Construction practices.
 - (i) Extent of erosion, scouring, wasting of land—both at site and as a result of fossil fuel demands of the facility.
 - (j) Corridor design and construction precautions for transmission lines or aqueducts.
 - (k) Scenic impacts.
 - (l) Effects on natural systems, wildlife, plant life.
 - (m) Impacts on important historic architectural, archeological, and cultural areas and features.
 - (n) Extent of recreation opportunities and related compatible uses.
 - (o) Public recreation plan for the project.
 - (p) Public facilities and accommodation.
 - (q) Opportunities for joint use with energy intensive industries, or other activities to utilize the waste heat from facilities.
- (3) Water resources impacts.
 - (a) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes and reservoirs.

- (b) Hydrologic studies of impact of facilities on ground water.
 - (c) Cooling system evaluation including consideration of alternatives.
 - (d) Inventory of effluents including physical, chemical, biological, and radiological characteristics.
 - (e) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments.
 - (f) Relationship to water quality standards.
 - (g) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses; relationship to projected uses; relationship to water rights.
 - (h) Effects on plant and animal life, including algae, macroinvertebrates, and fish population.
 - (i) Effects on unique or otherwise significant ecosystems; e.g., wetlands.
 - (j) Monitoring programs.
- (4) Air quality impacts.
- (a) Meteorology. Wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion.
 - (b) Topography. Factors affecting dispersion.
 - (c) Standards in effect and projected for emissions, design capability to meet standards.
 - (d) Emissions and controls.
 - (i) Stack design.
 - (ii) Particulates.
 - (iii) Sulfur Oxides.
 - (iv) Oxides of Nitrogen.
 - (v) Heavy metals, trace elements, radioactive materials and other toxic substances.
 - (e) Relationship to present and projected air quality of the area.
 - (f) Monitoring program.
- (5) Solid wastes impact.
- (a) Solid waste inventory.
 - (b) Disposal program.
 - (c) Relationship of disposal practices to environmental quality criteria.
 - (d) Capacity of disposal sites to accept projected waste loadings.
 - (5) Radiation impacts.
 - (a) Land-use controls over development and population.
 - (b) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes.
 - (c) Analyses and studies of the adequacy of engineering safeguards and operating procedures.

- (d) Monitoring. Adequacy of devices and sampling techniques.
- (7) Noise impacts.
- (a) Construction period levels.
- (b) Operational levels.
- (c) Relationship of present and projected noise levels to existing and potential stricter noise standards.
- (d) Monitoring. Adequacy of devices and methods.

History: En. Sec. 16, Ch. 327, L. 1973.

70-817. Additional requirements by other governmental agencies not permitted after issuance of certificate—exceptions. Notwithstanding any other provision of law, no state or regional agency, or municipality or other local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a utility facility authorized by a certificate issued pursuant to the provisions of this act; except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards. Nothing in this act shall prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such facility.

History: En. Sec. 17, Ch. 327, L. 1973.

70-818. Revocation or suspension of certificate. A certificate may be revoked or suspended:

- (1) for any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the board's refusal to grant a certificate; or
- (2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or
- (3) for violation of the provisions of this act, the regulations issued thereunder, or orders of the board or department.

History: En. Sec. 18, Ch. 327, L. 1973.

70-819. Enforcement of act by residents of state—statement of failure to enforce act—mandamus—private suits for damages. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

- (2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement

or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this act or a rule adopted under this act is not being enforced, the court may order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a utility to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a utility facility.

History: En. Sec. 19, Ch. 327, L. 1973.

70-820. Adoption of rules—monitoring of facilities. (1) The board and department may adopt rules implementing the provisions of this act.

(2) The board and the department shall have continuing authority and responsibility for monitoring the operations of all certificated facilities, for assuring continuing compliance with this act and certificates issued hereunder, and for discovering and preventing noncompliance with this act and such certificates.

(3) The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to the possible future development of an underground utility facility employing geothermal resources, to comply with the following requirements:

- (a) Notify the department of the proposed action;
- (b) Submit to the department a description of the area involved;
- (c) Submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;
- (d) Submit to the department geological data reports at such times as may be required by the rules; and
- (e) Submit such other information as the board may require in the rules.

History: Amd. Sec. 4, Ch. 263, L. 1974.

History: En. Sec. 20, Ch. 327, L. 1973.

70-821. Penalties for violation of act—civil action by attorney general.

(1) Whoever

(a) without first obtaining a certificate of site and facility required under section 4 [70-804], commences to construct or operate a utility facility after the effective date of this act; or

(b) having first obtained a certificate of site and facility, constructs, operates or maintains a utility facility other than in compliance with the certificate; or

(c) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand dollars (\$10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce the act or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

1974 SUPPLEMENT

UTILITY SITES

70-823

(4) All fines collected shall be deposited in the state general fund.
History: En. Sec. 21, Ch. 327, L. 1973.

Compiler's Notes
Chapter 327, Laws 1973 became effective
March 16, 1973.

70-822. Grants, gifts and funds. The department shall have authority to receive grants, gifts and other funds from any public or private source, to assist in its activities under this act.

History: En. Sec. 22, Ch. 327, L. 1973.

70-823. Act supersedes other laws or regulations. This act supersedes other laws or regulations. If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule or regulation shall be deemed superseded for the purpose of this act.

History: En. Sec. 23, Ch. 327, L. 1973.

Effective Date

Section 25 of Ch. 327, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 16, 1973.

Seperability Clause

Section 24 of Ch. 327, Laws 1973 read "If any provision of this act, or its application to any person is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected."

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UTILIZATION OF THIS STUDY

The Old West Regional Commission has requested this Study in order to provide useful information to an unusually wide spectrum of interests. It is highly probable that elected officials from the village to the federal level, governmental administrators and planners, a variety of private businesses and countless individual citizens will all find that some facet of the Study is addressed to their respective concerns. It is not surprising, therefore, that no single methodology for utilizing the six volumes which comprise this Study is equally suited to the needs of all potential beneficiaries. However, it is possible to suggest several general approaches by which various materials contained herein may be identified and located.

If verbatim statutory materials or other specific items of information are sought, one useful device for determining whether they are included in the Study, and if so, in which volume, is the "Summary of Contents." This concise outline lists the Volume titles and the major sections of the Study, and is reproduced at the beginning of each volume.

If the "Summary of Contents" fails to provide adequate guidance, the "Summary of Study" contained in Volume One offers a far more comprehensive introduction to the Study's contents. The "Summary of Study" briefly describes the substance of each of the six volumes and provides a limited sampling of the analytical sections of the Study. From the "Summary of Study" a particular volume may be identified as the most probable source of the information sought. In that event, the Overview which appears at the beginning of the relevant volume should then be examined. Each Overview provides a narrative description of the volume and describes the rationale utilized to select and organize the materials contained in that volume.

All statutes reproduced in the Study have been collected in Volumes Two, Four, Five and Six. Selected statutes from the states of Montana, North Dakota and Wyoming are located in Volumes Four, Five and Six respectively. Specific legislation from any of these three states can be located by referring to the Common Index found in the front of the appropriate volume. A reader interested in statutes or ordinances from any other state should examine the Table of Contents for Volume Two.

A more general treatment of the problems associated with rapid population growth than that which is provided by the collection of statutes appears in the subsection of Volume One entitled "Responses of Areas of Previous Rapid Growth". This section describes and analyzes the ways in which selected areas have responded to growth patterns. It is suggested that the temptation to turn immediately to the subsections dealing with "Problems Encountered" and "Government Reactions" be resisted. Inquiry should instead begin with an examination of the first subsection entitled "Areas of Interest: Problems and Responses." This approach is recommended because the description of experiences in other geographic areas provides an essential foundation for the articulation of common problems and the analysis of available responses. In a similar vein, the "Principles for Legislation" which form the concluding subsection of Volume One can be fully understood only if the three prior subsections have been carefully considered.

A variety of detailed references are located in the bibliographies located in the second portion of Volume Three. Among the items included in the bibliographical section are: sources for obtaining additional data and practical assistance with respect to specific problems, an

extensive bibliography of useful publications, and a list of individuals and organizations throughout the United States familiar with the topics considered in this Study. Also contained in the bibliographical section is a list of Environmental Impact Statements and other Reports and Studies recently completed or now in progress, together with sufficient information to obtain copies of these documents. Thus, the bibliographies provide access to voluminous additional information concerning both specific geographic areas and specific topics of interest.

Legislative innovations in response to the problems of rapid population growth, and the judicial construction of these innovations, are currently evolving at a rapid pace. Accordingly, it must be recognized that the material included in this Study was compiled on or before September 3, 1974 and may have been altered or amended subsequent to that date. Questions concerning the applicability to specific problems of any portion of the Study should be addressed to governmental agencies or private legal counsel particularly familiar with those specific problems. However, general comments concerning the Study or inquiries about its reproduction may be addressed to the Old West Regional Commission.

